Supreme Court, U.S.
FILED
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No. 03-985

In The
Supreme Court of the United States

Lonnell Brewer,

Petitioner,

v.

Board of Trustees of University of Illinois, and Kerrin Thompson, L. Denise Hendricks, Wallace Hendricks, and Peter Feuille in their Official and Individual Capacities,

Respondents

On Petition for Writ of Certiorari
To The Illinois Court of Appeals for The
Fourth Judicial District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether interpreting the Illinois Human Rights Act Such That it Preempts the Illinois Circuit Court of Original Jurisdiction of All Federal Civil Rights Claims, Whether or Not Such Claims Are In The Purview of The Act, Violates The Supremacy Clause of the United States Constitution

2. Whether the Eleventh Amendment Bars Americans With Disabilities Act Claims Against State Entities When Both State and Federal Courts Have Held That The State Has Consented To Suit.

PARTIES TO THE PROCEEDING

There are no parties to this proceeding that do not appear in the case caption.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Lonnell Brewer, respectfully prays that a writ of certiorari issue to review the judgment and opinion of Illinois Court of Appeals for the Fourth Judicial District entered in this proceeding on June 17, 2003, in order to bring the opinion of the Court of Appeals into conformance with federal law interpreting the Supremacy Clause and the Eleventh Amendment.

OPINIONS BELOW

The opinion of the Illinois Court of Appeals for the Fourth District can be found at *Brewer v. University of Illinois,* 339 Ill.App.3d 1074, 791 N.E.2d 657, 274 Ill.Dec. 565 (4th Dist. 2003) (App. C). The denial of petition for appeal by the Illinois Supreme Court is not published (App. F). The Amended Judgment of the Circuit Court of Champaign County, Illinois is also not published. (App. B).

STATEMENT OF JURISDICTION

The Appellate Court of Illinois, Fourth District entered its judgment on June 17, 2003. No petition for rehearing was filed. The Supreme Court of Illinois Denied the Petition for Appeal as a Matter of Right or Leave to Appeal on October 7, 2003.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257 because petitioner raised and preserved, and a state court of last resort rejected federal constitutional claims.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SUPREMACY CLAUSE

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S.C.A. Const. Art. VI, cl. 2.

ELEVENTH AMENDMENT

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S.C.A. Const. Amend. XI.

ILLINOIS HUMAN RIGHTS ACT

§ 8-111. Court Proceedings.

(C) Limitation. Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act.

775 ILCS 5/8-111(C).

(the Act in its entirety is set forth in App. D)

STATEMENT OF THE CASE

A. Factual Background

Petitioner was enrolled in the Master's Degree Program at the University of Illinois, Champaign Urbana, as well as employed as a Research Assistant in the University's Personnel Services Office in 1997 and 1998. On April 22, 1998, Petitioner was terminated from his employment with the University. On June 18, 2998, Petitioner was terminated from the Master's Degree program. Petitioner filed a timely Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC) alleging that his termination from his employment and from the master's degree program was due to his race and learning disability. The EEOC made a probable cause determination on Petitioner's disability discrimination claim, but the Department of Justice declined to pursue the claim on Petitioner's behalf.

B. The Proceedings Below

Petitioner filed his Complaint in the Circuit Court of Champaign County, Illinois. Petitioner's Complaint against defendants consisted of five (5) counts. Count I asserted a race discrimination claim under Title VII against all defendants. Count II alleged an Americans with Disabilities Act ("ADA") failure to accommodate claim against The Board of Trustees and defendants Thompson and Hendricks. Count III alleged §1983 claims against the individual defendants in their individual capacities for equal protection violations and violations of Title VI and the ADA. Count IV asserted a Title VI claim against all defendants for race discrimination. Count V alleges

retaliation by all defendants for Petitioner's complaints concerning the alleged acts of discrimination.

In lieu of an Answer to the Complaint, Defendants filed a Motion to Dismiss for want of subject matter jurisdiction. In their Motion, Defendants argued that the Eleventh Amendment bars Petitioner's ADA claim, that "there is no individual liability under Title VII, Title VI or the ADA", and that the Illinois Human Rights Act ("the Act") preempts the circuit court of original jurisdiction for all of Petitioner's claims. In his Response, Petitioner argued that the Eleventh Amendment does not bar ADA claims brought in state court, that there is individual liability for state actors for constitutional and statutory violations under 42 U.S.C. §1983, and that the Act cannot preempt the circuit court of original jurisdiction of any of Petitioner's claims, in part because such "preemption" contradicts clear federal authority and violates the Supremacy Clause, U.S. Const. Art. VI, § 2. (App.E) Accordingly, the constitutional issues addressed herein were raised at the earliest possible stage of the state court proceedings.

The trial court set defendants' Motion to Dismiss for hearing on September 23, 2002. The trial court issued an order immediately following oral argument granting defendants' Motion and dismissing all of Petitioner's claims. The trial court dismissed Count II (the ADA claim) on the basis that the Illinois Supreme Court's decision in *Cooper v. Illinois State University*, 331 Ill.App.3d 1094, 772 N.E.2d 396 (2002), compelled the court to dismiss. (App. A) Counts III, and V (and presumably, Count I) were dismissed on the basis that *Faulkner-King v. Wicks*, 226 Ill.App.3d 962, 590 N.E.2d 511 (4th Dist. 1992) dictated that conclusion that the Illinois Human Rights Act pre-

empts all civil rights claims, including those based on federal law. (App. A) The trial court expressly noted that both *Cooper* and *Faulkner-King* appeared to conflict with federal court decisions. (App. A) Count IV was dismissed because the trial court concluded that the Court of Claims was the exclusive venue within which the Title VI claim could be brought. (App. A)

The trial court initially dismissed Petitioner's claims "with prejudice." At the close of the trial court's oral ruling on Defendants' Motion, Petitioner raised the issue of the propriety of dismissal for want of jurisdiction "with prejudice." The Court invited the Petitioner to file a Motion for Modification of Judgment to address this issue, which Petitioner did. Defendants' did not object to this Motion, and the Court entered an Amended Judgment on October 21, 2002. (App. B)

Petitioner timely filed his Notice of Appeal to the Illinois Court of Appeals for the Fourth District on October 23, 2002. The Appellate Court of Illinois, Fourth District entered its judgment on June 17, 2003 affirming the trial court's dismissal of all of petitioner's claims. (App. C) No petition for rehearing was filed. The Supreme Court of Illinois Denied the Petition for Appeal as a Matter of Right or Leave to Appeal on October 7, 2003. (App. F)

REASONS FOR GRANTING THE WRIT

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW HAS DECIDED AN IMPORTANT SUPREMACY CLAUSE ISSUE IN A MANNER THAT CONFLICTS WITH *HOWLETT V. ROSE* AND CORRESPONDING AUTHORITIES.

There is a direct conflict between state and federal authorities on the issue of whether a state may bar certain federal civil rights claims from its courts. The state appellate court's decision directly contradicts controlling U.S. Supreme Court authority which dictates the conclusion that "***Illinois may not exclude claims based on federal law.***" *Erickson v. Board of Governors of State Colleges & Universities for Northeastern Illinois University,* 207 F.3d 945, 952 (7th Cir. 2000), citing *Howlett v. Rose*, 496 U.S. 356, 367-75, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990); *FERC v. Mississippi*, 456 U.S. 742, 759-69, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982); *Testa v. Katt*, 330 U.S. 386, 67 S.Ct. 810, 91 L.Ed. 967(1947). This conflict underscores the general importance of the issue.

Moreover, the Appellate Court's decision significantly impacts the civil rights of state employees, particularly those who are the victims of age or disability discrimination. Assuming, *arguendo*, that the Court determines that Illinois has not consented to suit and that the state is entitled to sovereign immunity on ADA claims (and presumably ADEA claims), victims of age and disability discrimination have no recourse except to file a claim with the Illinois Human Rights Commission. With all due deference to the Commission, the loss of the opportunity for discovery and right to a jury trial are significant to such victims of discrimination. Because this issue has far-reaching implications with respect to the civil rights of state employees, this Court should review this case and resolve the conflict between state and federal law

The trial court, acknowledging the conflict between state and federal law, concluded that Counts I, II, III and V were preempted by § 8-111(C) of the Illinois Human Rights Act ("the Act") under *Faulkner-King v. Wicks*, 226 Ill.App.3d 962, 590 N.E.2d 511 (1992). Section 8-111(C) states that "[e]xcept as otherwise provided by law, no court

of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in [the] Act." 775 ILCS 5/8-111(C).

Reversal of the appellate court's decision is proper because the court's interpretation of the Act violates the Supremacy Clause, U.S. Const. Art. VI, § 2. In *Donnelly v. Yellow Freight System, Inc.* 874 F.2d 402, 409-10 (7th Cir. 1989), Aff'd, 110 S.Ct. 1566 (1990), the Seventh Circuit, interpreting well-established U.S. Supreme Court precedent explicitly concluded that Illinois courts must recognize federal employment discrimination claims. Id. at 409. In *Donnelly*, defendant argued that, pursuant to *Mein v. Masonite Corp.*, 109 Ill.2d 1, 485 N.E.2d 312 (1985), that Illinois Title VII claims could not be heard in state court. *Id.* The Seventh Circuit explicitly rejected this argument stating:

> Even if the *Mein* court did, in fact, intend to exclude Title VII claims from the Illinois courts, **neither the Illinois courts nor legislature have the power to close state court doors to federal causes of action**. When presented with a federal claim over which concurrent jurisdiction exists, state courts are under a "duty to exercise (jurisdiction)" over the federal claim.
>
> . . . .
>
> Once Congress has vested jurisdiction over a federal claim in the state courts, the state courts, including the courts of Illinois, are under a constitutional obligation to exercise jurisdiction.

Id. (citations omitted). To "close state doors" to federal causes of action as the above-referenced state authorities purport to do violates the Supremacy Clause, U.S. Const.

Art. VI, § 2. *Howlett v. Rose*, 496 U.S. 356, 110 S.Ct. 2430 (1990). In *Howlett*, this Court held that Florida's refusal to entertain a 42 U.S.C.§1983 claim against a school district, when state courts entertained similar state-law actions against state defendants, violated the Supremacy Clause. *Howlett* is controlling and directly applicable to the instant case. It is undisputed that Illinois does entertain civil rights actions against state defendants through the Act. Thus, under *Howlett*, the refusal to provide a state forum for similar federal claims is an unequivocal violation of the Supremacy Clause.

The propriety – indeed the necessity --of bringing an employment discrimination action under the ADA in Illinois state court was recently addressed by the Seventh Circuit in *Erickson*, 207 F.3d at 952 (7th Cir. 2000), which, in part, interpreted and relied upon *Howlett*. In concluding that the petitioner could not bring an ADA claim against the state *in federal court*, the court cautioned:

> But Northeastern Illinois University must understand the limits of this holding. The ADA is valid legislation, which both private and public actors must follow. Even if the Supreme Court should overrule *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985), and return to the view of *National League of Cities v. Usery*, 426 U.S. 833, 852, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976), that laws resting only on the Commerce Clause cannot "directly displace the States' freedom to structure integral operations in areas of traditional governmental functions," ***the University still would be bound by the ADA***, for running a

> university is no more a core governmental function than is running a railroad. See *United Transportation Union v. Long Island R.R.*, 455 U.S. 678, 102 S.Ct. 1349, 71 L.Ed.2d 547 (1982). Like most railroads, most universities in the United States are private.
>
> All our holding means is that private litigation to enforce the ADA may not proceed in federal court. ***Erickson may repair to Illinois court***--for although states may implement a blanket rule of sovereign immunity, see *Alden v. Maine*, 527 U.S. 706, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999), Illinois has not done this. Having opened its courts to claims based on state law, including its own prohibition of disability discrimination by units of state government, see 775 ILCS 5/1-102, 5/2-101(B)(1)(c), ***Illinois may not exclude claims based on federal law.*** *Howlett v. Rose*, 496 U.S. 356, 367-75, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990); *FERC v. Mississippi*, 456 U.S. 742, 759-69, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982); *Testa v. Katt*, 330 U.S. 386, 67 S.Ct. 810, 91 L.Ed. 967(1947). Moreover, the United States may enforce the ADA against the University and other state actors through federal litigation. [Citation.] But Erickson has not enlisted the United States as her champion * * * ***so this suit belongs in state court.***"

Id. at 952. (Emphasis added).

Although *Erickson* may not be controlling, the U.S. Supreme Court authorities referenced therein are controlling and compel the conclusion that "Illinois may not exclude claims based on federal law." *Erickson* at 952; *Howlett v. Rose*, 496 U.S. 356, 367-75, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990); *FERC v. Mississippi*, 456 U.S. 742, 759-69, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982); *Testa v. Katt*, 330 U.S. 386, 67 S.Ct. 810, 91 L.Ed. 967(1947).

In fact, in *Cooper* the Fourth District explicitly acknowledged that it is bound to follow U.S. Supreme Court law as to issues concerning the United States Constitution. *Cooper*, 331 Ill.App.3d at 1100, 772 N.E.2d at 400-401 (2002) The Supremacy Clause analysis is an issue of federal law and, as such, Illinois courts cannot ignore federal, and in particular, relevant authority of this Court.

For the reasons set forth herein, the Act cannot preempt the Illinois Circuit Court of jurisdiction for any of petitioner's claims. To the extent that the Act requires such a result, it is unconstitutional.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW HAS DECIDED AN IMPORTANT ELEVENTH AMENDMENT ISSUE CONCERNING WHEN A STATE CONSENTS TO SUIT, WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The Appellate Court improperly upheld the trial court's dismissal of Petitioner's ADA claim (Count II), on the basis that *Cooper v. Illinois State University*, 331 Ill.App.3d 1094, 772 N.E.2d 396 (2002), applied to compel dismissal on Eleventh Amendment sovereign immunity grounds. In fact, *Cooper* read in conjunction with controlling federal authorities dictates the opposite result.

The doctrine of sovereign immunity is subject to numerous exceptions. *See Alden v. Maine*, 527 U.S. 706, 755-57, 119 S.Ct. 2240 (1999). 'The constitutional privilege of a State to assert its sovereign immunity in its own courts does not confer upon the State a concomitant right to disregard the Constitution or valid federal law." *Id.* at 754-55. Immunity on federal claims is a question of federal, rather than state, law. *Payne for Hicks v. Churchich*, 161 F.3d 1030, 1038 (7th Cir. 1998). As this Court stated in *Howlett v. Rose*, 496 U.S. 356, 110 S.Ct. 2430 (1990), "[t]he elements of, and the defenses to, a federal cause of action are defined by federal law." *Id.* at 375. This Court explicitly stated that "[m]unicipal defenses—including an assertion of sovereign immunity—to a federal right of action are, of course, controlled by federal law. *Id.* at 376.

In *Board of Trustees of the University of Alabama v. Garrett,* 531 U.S. 356, 374, 121 S.Ct. 955 (2001), this Court held that Eleventh Amendment immunity bars ADA suits by private individuals against *non-consenting* states *brought in federal court. Id.* at 364. The Court in *Alden v. Maine*, 527 U.S. 706, 759-60, 119 S.Ct. 2240 (1999), clarified the applicability of sovereign immunity, holding that Congress cannot subject a state to suit in state court *without its consent. Id.* Citing *Alden,* the Seventh Circuit recently held:

> . . . although states may implement a blanket rule of sovereign immunity, Illinois has not done this. *Having opened its courts to claims based on state law, including its own prohibition of disability discrimination by units of state government, see 775 ILCS 5/1-102, 5/2-101(B)(1)(c)*, Illinois may not exclude claims based on federal law.

Erickson v. Board of Governors of State Colleges & Universities for Northeastern Illinois University, 207 F.3d 945, 952 (7th Cir. 2000) (emphasis added). Accordingly, the Seventh Circuit has definitively determined that Illinois has consented to suit and *may not exclude federal claims on the basis of sovereign immunity. Id.* This is the correct interpretation of this court's precedent. In *Cooper,* the Appellate Court explicitly conceded that the Seventh Circuit was correct in concluding that Illinois has consented to defend itself against employment discrimination claims. *Cooper,* 331 Ill.App.3d at 1100, 772 N.E.2d at 400-401 (2002).

Because *Cooper* and applicable federal authorities acknowledge Illinois' consent to suit for disability discrimination claims, under *Alden*, Petitioner's ADA claim should not be barred by the Eleventh Amendment.

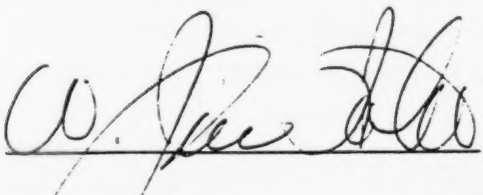
The Appellate Court's decision has grave repercussions for state employees in Illinois. Under the current state of the law, state employees who are the victims of disability or age discrimination have no recourse in *any* court, federal or state. Rather, they are limited to pursuing their actions before a state administrative agency – the Illinois Human Rights Commission. With all due deference to the Commission, one arm of the state policing another, particularly in the area of civil rights, raises, at least in theory, issues of bias and fundamental fairness. Moreover, the issue has great significance for all state employees – if Illinois can effectively insulate itself from liability for all age and disability discrimination claims, then other states can enact similar legislation that permits those states to circumvent these laws as well.

Because of the general importance and far-reaching implications of the immunity issue presented by this case, the Court should review this case to resolve the issue.

CONCLUSION

For each of the foregoing reasons, the petition for a writ of *certiorari* should be granted.

Respectfully submitted,



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APPENDIX A

THE COURT[1]: Well, certainly I appreciate the extensive briefing that was done. It was very helpful and very considerate to give me copies of the cases which greatly facilitated my research, and argument this afternoon has clarified a few things for me.

I don't want to frankly maintain suspense, so I will render a ruling at this time. As to counts one, two, and four against the individual defendants I believe we are agreed that those must be dismissed.

So the motion to dismiss counts one, two, and four with regard to individual defendants is allowed.

As there's no contest with regard to count two, the ADA claims against the Board of Trustees, I believe that Cooper vs. Illinois State University, whether rightly or wrongly decided, does govern. As Justice Steigmann pointed out in his usual strong language in his opinion, the Fourth District is not bound by the decisions of federal courts, other than the United States Supreme Court, and then only as those apply to constitutional matters.

However, the Fourth District is binding on this court, and whether or not the court agrees with Cooper vs. Illinois State University – and the court will not be so presumptuous as to express an opinion one way or the other – this court is bound to follow it, and I believe that's conclusive, at least as to this court, on count two. If it's to be changed it will have to be changed by a higher court that that one. So for these reasons the motion to dismiss count two is allowed as to all defendants with prejudice.

---

[1] The portion of the transcript contained herein begins at line 14, page 12 and ends at line 1, page 15. The original transcript formatting could not be preserved while at the same time maintaining compliance with Supreme Court formatting requirements.

With regard to count three of the Section 1983 claims, count four and count five claims, again I would have to agree with the defense that Faulkner-King – that's Faulkner-King – does control my decision on the pre-emption issue, that the Human Relations act does pre-empt employment discrimination claims. Again, that would appear quite possibly to be in conflict with some decisions by at least the Seventh Circuit. I agree with the more restrictive reading made frankly by the plaintiff here to Albin[sic] I don't think that directly controls this issue. It stands, however, for the general proposition for which it was cited by the defense and relied upon subsequently. But Faulkner-King does seem to directly control my decision as [sic] counts three, four, and five. For that reason the motion to dismiss is allowed as to those counts as well with prejudice.

With regard to count six, I agree that that's not a pre-emption issue in the sense of the Human Relations Act. The real question is whether or not the exclusive venue for that claim is the Illinois Court of Claims as opposed to this court. I believe there that the test set forth in Wozniak vs. Conroy and the host of other cases addressing this issue is the applicable one. It doesn't matter who the named defendants are, what is important is the type of conduct to which the complaint is directed, and here it would seem that this is directed to the type of conduct which would effectively control conduct by the state, as opposed to individuals. I would agree with the defense that there is a venue here, an avenue, but I do believe it's the Court of Claims as opposed to this court, and so for that reason the motion to dismiss count six I allowed as well with prejudice. The court finds no just reason to delay enforcement or appeal.

APPENDIX B

IN THE CIRCUIT COURT

OF THE SIXTH JUDICIAL CIRCUIT,

CHAMPAIGN COUNTY, STATE OF ILLINOIS

LONNELL BREWER	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**CASE NO.: 02 L 128**
	)	
	)	
BOARD OF TRUSTEES	)	
OF UNIVERSITY OF	)	
ILLINOIS	)	**FILED**
	)	**Sixth Judicial Circuit**
	)	**OCT 21 2002**
AND	)	**Linda S. Frank**
	)	**Clerk of the Circuit**
Court		
KERRIN THOMPSON,	)	**Champaign County,**
L.DENISE HENDRICKS,	)	**Illinois**
WALLACE HENDRICKS,	)	
PETER FEUILLE,	)	
In their Official and	)	
Individual Capacities	)	
	)	
Defendants.	)	

AMENDED JUDGMENT

The Court, having reviewed Plaintiff's Motion for Modification of Judgment, and being fully advised in the

premises and Defendants having filed no objection to Plaintiff's Motion, hereby amends this Court's Judgment of September 23, 2002 as follows:

> Defendants' Motion to Dismiss Counts I, II and IV is allowed as to the individual Defendants, with prejudice.
>
> Defendants' Motion to Dismiss the remaining claims contained in Counts I, II, III, IV, V and VI for want of jurisdiction is allowed. The dismissal of these claims is jurisdictional in nature and not an adjudication on the merits. The dismissal is without prejudice to any potential claims plaintiff may have in federal court. Plaintiff is prevented from further prosecuting his claims in this court and no leave to amend has been sought or granted.
>
> The Court finds no just reason to delay enforcement or appeal.

_____10/21/02_____

/s/_____

DATE HON. JOHN R. DELAMAR

APPENDIX C

NO. 4-02-0885

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

LONNELL BREWER)	**FILED**
)	**JUN 17 2003**
)	**CLERK OF THE**
Plaintiff,)	**APPELLATE COURT**
)	**4th DIST.**
vs.)	
)	
)	
BOARD OF TRUSTEES)	**Appeal from**
OF UNIVERSITY OF)	**Circuit Court of**
ILLINOIS)	**Champaign County**
)	**No. 02L128**
)	
AND)	
)	**Honorable**
KERRIN THOMPSON,)	**John R. DeLaMar**
L.DENISE HENDRICKS,)	**Judge Presiding**
WALLACE HENDRICKS,)	
PETER FEUILLE,)	
In their Official and)	
Individual Capacities)	
)	
Defendants.)	

Justice APPLETON delivered the opinion of the court:

Plaintiff, Lonnell Brewer, filed a complaint alleging violations of federal antidiscrimination statutes. He named, as defendants, the Board of Trustees (Board) of the University of Illinois and four employees of the Board, in their official and individual capacities.

Pursuant to section 2-619(a)(1) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1) (West 2000)), defendants moved to dismiss the complaint on the grounds of sovereign immunity and a lack of subject-matter jurisdiction. The circuit court granted the motion. Plaintiff appeals, arguing that (1) Illinois has consented to being sued in circuit court for disability discrimination; (2) section 8-111(C) of the Illinois Human Rights Act (Human Rights Act) (775 ILCS 5/8-111(C) (West 2000)) allows a circuit court to exercise original jurisdiction over claims of discrimination that arise from federal statutes; and (3) the circuit court, rather than the Court of Claims, had subject-matter jurisdiction over his claims.

We disagree with all three of those contentions. We hold that the Board, as an arm of the State of Illinois, has sovereign immunity to claims for damages in circuit court, including claims arising out of federal antidiscrimination statutes. We further hold that the circuit court had no subject-matter jurisdiction over plaintiff's claims, because the claims were essentially "subjects" of alleged "civil rights violations" within the meaning of section 8-111(C)--claims over which the Illinois Human Rights Commission (Commission) had exclusive subject-matter jurisdiction. Therefore, we affirm the trial court's judgment.

I. BACKGROUND

In his five-count complaint, plaintiff alleged he was an African-American with a learning disability that "substantially impair[ed] one or more [of his] major life activities[,] including, but not limited to, reading and other tasks relating to cognitive processing." From August 29, 1997, through April 22, 1998, he was employed as a research assistant in the university's personnel services office. Also, from the fall semester of 1997 through June 18, 1998, he was enrolled in the university's master's-degree program in its Institute of Labor and Industrial Relations (Institute). The individual defendants were Kerrin Thompson, special assistant to the director of the personnel services office; L. Denise Hendricks, assistant vice president of human resources, associate vice chancellor for administrative affairs, and director of the personnel services office; Wallace Hendricks, a professor in the Institute; and Peter Feuille, a professor and the Institute's director.

In count I, directed against all the defendants, plaintiff alleged they had violated Title VII of the Civil Rights Act of 1964 (Title VII) (42 U.S.C. § § 2000e through 2000e-17 (2000)) by firing him, and terminating his enrollment in the master's-degree program, because of his race.

In count II, directed against the Board, Thompson, and L. Denise Hendricks, plaintiff alleged they had violated the Americans with Disabilities Act of 1990(ADA) (42 U.S.C. § § 12111 through 12117 (2000)) by failing to provide him reasonable accommodations in his job as a research assistant.

In count III, directed against all of the individual defendants, he alleged they were liable to him under section

1 of the Civil Rights Act (section 1983) (42 U.S.C. § 1983 (2000)) for treating him less favorably than similarly situated employees and students who were not African-American, thereby depriving him of the equal protection of the laws, in violation of the fourteenth amendment (U.S. Const., amend.XIV), and for discriminating against him because of his learning disability, in violation of the ADA.

In count IV, directed against all of the defendants, he alleged, on information and belief, that the university or the Institute was a "program" (or both of them were "programs") receiving federal financial assistance within the meaning of Title VI of the Civil Rights Act of 1964 (Title VI) (42 U.S.C. § § 2000d through 2000d-4 (2000)) and that defendants had violated Title VI by denying him "the benefits of[,] and continued participation in, the program[ ] on the basis of his race."

In count V, directed against all of the defendants, he alleged they had unlawfully retaliated against him, firing him and terminating his enrollment in the master's-degree program, because he had complained of their discrimination against him.

In its order granting defendants' motion to dismiss the complaint, the trial court stated: "The dismissal of these claims is jurisdictional in nature and not an adjudication on the merits. The dismissal is without prejudice to any potential claims plaintiff may have in federal court. Plaintiff is prevented from further prosecuting his claims in this court * * *." This appeal followed.

II. ANALYSIS

A. Standard of Review

We review *de novo* the dismissal of a complaint under

section 2-619. *Golden Rule Insurance Co. v. Elton,* 328 Ill.App.3d 444, 446, 262 Ill.Dec. 649, 766 N.E.2d 269, 271 (2002).

B. Sovereign Immunity

Plaintiff argues that Illinois has consented to being sued in circuit court for violations of the ADA and, therefore, the circuit court erred in dismissing count II. He apparently does not dispute that the Board would have sovereign immunity but for such consent. See *City of Chicago v. Board of Trustees of the University of Illinois,* 293 Ill.App.3d 897, 901, 228 Ill.Dec. 253, 689 N.E.2d 125, 127 (1997). In support of his argument, he reminds us of our statement in *Cooper v. Illinois State University,* 331 Ill.App.3d 1094, 1100, 265 Ill.Dec. 358, 772 N.E.2d 396, 400 (2002), that "Illinois has consented to defend itself against employment-discrimination claims."

He also quotes the following *dicta* from *Erickson v. Board of Governors of State Colleges & Universities for Northeastern Illinois University,* 207 F.3d 945, 952 (7th Cir.2000):

> "[A]lthough states may implement a blanket rule of sovereign immunity, see *Alden v. Maine,* 527 U.S. 706, [119 S.Ct. 2240, 144 L.Ed.2d 636] (1999), Illinois has not done this. Having opened its courts to claims based on state law, including its own prohibition of disability discrimination by units of state government, see 775 ILCS 5/1-102, [ ]2-101(B)(1)(c) [(West 2000)], Illinois may not exclude claims based on federal law. [*Howlett v. Rose,* 496 U.S. 356, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990); *Federal Energy Regulatory Comm'n v. Mississippi,* 456 U.S. 742, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982) (hereinafter *FERC*); *Testa v. Katt,* 330 U.S. 386, 67 S.Ct. 810, 91 L.Ed. 967 (1947)]."

Plaintiff acknowledges that in *Cooper,* 331 Ill.App.3d at 1100, 265 Ill.Dec. 358, 772 N.E.2d at 400, we disagreed with that quotation from *Erickson.* He asks us to reconsider. We continue to disagree with it.

When we said, in *Cooper,* that Illinois had consented to defending itself against claims of discrimination in employment, we meant only claims before the Commission, as we were careful to emphasize. *Cooper,* 331 Ill.App.3d at 1100, 265 Ill.Dec. 358, 772 N.E.2d at 400. Illinois courts' lack of jurisdiction over such claims has critical implications for sovereign immunity. As a matter of pure logic, it is impossible for Illinois to have consented to defending itself against a claim in its courts if Illinois has withheld, from its courts, subject-matter jurisdiction over that type of claim.

The eleventh amendment (U.S. Const., amend.XI) expresses the presupposition that the states would retain their sovereign immunity after the ratification of the United States Constitution. *Federal Maritime Comm'n v. South Carolina State Ports Authority,* 535 U.S. 743, 753-54, 122 S.Ct. 1864, 1871, 152 L.Ed.2d 962, 973 (2002); *Alden,* 527 U.S. at 713, 119 S.Ct. at 2246-47, 144 L.Ed.2d at 652. The amendment does not define the extent of that immunity so much as confirm the constitutional structure the Framers contemplated (*Federal Maritime Comm'n,* 535 U.S. at 753-54, 122 S.Ct. at 1871, 152 L.Ed.2d at 973), a structure that reserved to the states "a substantial portion of the [n]ation's primary sovereignty, together with the dignity and essential attributes inhering in that status," including immunity from private suits for damages. *Alden,* 527 U.S. at 714-15, 119 S.Ct. at 2247, 144 L.Ed.2d at 653-54, citing The Federalist No. 39, at 245 (C. Rossiter ed.1961) (J. Madison). "[T]he [s]upremacy [c]lause enshrines as 'the supreme Law of the

Land' only those [f]ederal [a]cts that accord with the constitutional design"--a design that contemplates the preservation of the states' sovereign immunity. *Alden,* 527 U.S. at 731, 119 S.Ct. at 2255, 144 L.Ed.2d at 664, quoting U.S. Const., art. VI.

The Supreme Court has squarely held that the eleventh amendment bars suits by private citizens against states for money damages under the ADA. *Board of Trustees of the University of Alabama v. Garrett,* 531 U.S. 356, 360, 121 S.Ct. 955, 960, 148 L.Ed.2d 866, 874-75 (2001). A state can waive its sovereign immunity by consenting to private suits against itself (*Alden,* 527 U.S. at 755, 119 S.Ct. at 2267, 144 L.Ed.2d at 679), but the consent must be express and unequivocal (*College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board,* 527 U.S. 666, 680, 119 S.Ct. 2219, 2228, 144 L.Ed.2d 605, 619 (1999)). As we explained in *Cooper,* 331 Ill.App.3d at 1097, 265 Ill.Dec. 358, 772 N.E.2d at 398, the Illinois Constitution of 1970 abolished sovereign immunity but allowed the General Assembly to reinstate it. Ill. Const.1970, art. XIII, § 4. The General Assembly reinstated sovereign immunity by enacting the State Lawsuit Immunity Act (Immunity Act), which provides: "Except as provided in the [ ]Illinois Public Labor Relations Act [ ] [(5 ILCS 315/1 through 27 (West 2000))], * * * or except as provided in [the Court of Claims Act (705 ILCS 505/1 through 29 (West 2000))], * * * *the State of Illinois shall not be made a defendant or party in any court.*" (Emphasis added.) 745 ILCS 5/1 (West 2000).

It is difficult to understand how one could assert that Illinois has "opened its courts," *i.e.,* its circuit courts, to *any* claims against itself (let alone claims of disability discrimination) when the Immunity Act plainly states that except as provided in the Illinois Public Relations Act or the

Court of Claims Act, Illinois "shall not be made a defendant * * * in any court." 745 ILCS 5/1 (West 2000). Illinois has not clearly waived sovereign immunity; far from it, Illinois has clearly reinstated sovereign immunity, with the two narrow qualifications the Immunity Act specifies. Neither of those qualifications provides plaintiff an entrée into circuit court.

Illinois courts have no subject-matter jurisdiction over claims of disability discrimination in employment, except for the limited purpose of judicial review. 775 ILCS 5/7-101.1(A), 8-111(A), (C) (West 2000). Only the Commission--an administrative agency, not a court--can adjudicate such claims. 775 ILCS 5/8-111(C), 8A-102, 8A-103 (West 2000); *Castaneda v. Illinois Human Rights Comm'n,* 132 Ill.2d 304, 322-23, 138 Ill.Dec. 270, 547 N.E.2d 437, 445-46 (1989); *Faulkner-King v. Wicks,* 226 Ill.App.3d 962, 970- 71, 168 Ill.Dec. 874, 590 N.E.2d 511, 518 (1992). Contrary to the *dicta* in *Erickson,* Illinois has not "opened its courts" to claims of disability discrimination and, therefore, has not consented to adjudicate, in its own courts, similar claims premised on federal law.

C. Section 8-111(C) of the Human Rights Act

Plaintiff's actions in this case are all "subject[s] of * * * alleged civil rights violation[s]." 775 ILCS 5/8-111(C) (West 2000). The university is an "employer" within the meaning of section 2-101(B)(1)(c) of the Human Rights Act. 775 ILCS 5/2-101(B)(1)(c) (West 2000). It is a civil rights violation for an "employer" to discriminate against an employee on the basis of race or handicap. 775 ILCS 5/2-102(A), 1-103(Q) (West 2000). Discrimination on the basis of handicap includes a failure to make reasonable accommodation. See 56 Ill. Adm.Code § 2500.40 (Conway

Greene CD-ROM March 2002); *In re Request for Review by Cyrex,* Ill. Hum. Rts. Comm'n Op.1995CH2945 (June 20, 1997) (1997 ILHUM LEXIS 472, at *2). It is also a civil rights violation to "[r]etaliate against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination." 775 ILCS 5/6-101(A) (West 2000).

Section 8-111(C) states: "Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act." 775 ILCS 5/8-111(C) (West 2000). Relying on the initial limiting phrase ("[e]xcept as otherwise provided by law"), plaintiff argues that the trial court had subject-matter jurisdiction over his claims under Title VII and section 1983 because federal law "otherwise provided" that Illinois courts had jurisdiction over such claims. Even if we agreed with plaintiff's interpretation of section 8-111(C)--even if the trial court could exercise jurisdiction over federally created claims of discrimination--we still would affirm, on the ground of sovereign immunity, the dismissal of plaintiff's section 1983 actions against the Board and the individual defendants in their official capacities. See *Will v. Michigan Department of State Police,* 491 U.S. 58, 66, 71, 109 S.Ct. 2304, 2309-10, 2312, 105 L.Ed.2d 45, 55, 58 (1989).

Besides, we disagree with plaintiff's interpretation of section 8-111(C). Neither Title VII nor section 1983 provides that plaintiffs may sue in state court. Those two statutes, by their terms, provide a right of action in federal court. 42 U.S.C. § § 2000e-5(f)(3), 1988 (2000). Because of "the presumption of concurrent jurisdiction that lies at the core of our federal system," state courts can exercise concurrent jurisdiction over claims under Title VII and section 1983. *Yellow Freight System, Inc. v. Donnelly,* 494

U.S. 820, 826, 110 S.Ct. 1566, 1570, 108 L.Ed.2d 834, 841 (1990); *Martinez v. California,* 444 U.S. 277, 283 n. 7, 100 S.Ct. 553, 558 n. 7, 62 L.Ed.2d 481, 488 n. 7 (1980). We do not think that the mere "presumption of concurrent jurisdiction" implied in our federal system is the sort of legal provision the legislature had in mind in the initial clause of section 8-111(C).

In *Board of Trustees of the Police Pension Fund v. Illinois Human Rights Comm'n,* 141 Ill.App.3d 447, 454, 95 Ill.Dec. 759, 490 N.E.2d 232, 236 (1986), we gave the words "[e]xcept as otherwise provided by law" a narrow construction. In *Urbana,* 141 Ill.App.3d at 449, 95 Ill.Dec. 759, 490 N.E.2d at 232, the plaintiff applied to participate in the police pension fund of the City of Urbana. The board of trustees of the pension fund denied his application on the ground that he suffered from diabetes and " 'could become disabled[,] and thus eligible for disability benefits, at the time of his choice by simply not taking the medication for his condition.' " *Urbana,* 141 Ill.App.3d at 450, 95 Ill.Dec. 759, 490 N.E.2d at 233. Instead of seeking judicial review of the board's decision, the plaintiff filed a charge of handicap discrimination with the Illinois Department of Human Rights. *Urbana,* 141 Ill.App.3d at 450, 95 Ill.Dec. 759, 490 N.E.2d at 233.

Section 3-132 of the Illinois Pension Code (Ill.Rev.Stat., 1984 Supp., ch. 108 1/2, par. 3-132) provided that the board of trustees of the pension fund had the power and duty " '[t]o control and manage, *exclusively,* the pension fund.' " (Emphasis added.) *Urbana,* 141 Ill.App.3d at 452, 95 Ill.Dec. 759, 490 N.E.2d at 235. We reasoned: "[I]t is apparent that the board is vested with authority over matters which necessarily involve potential human rights claims; therefore, the provisions of the Illinois Pension Code which grant such authority qualify within the phrase * * * which

reads: '[e]xcept as otherwise provided by law.' " *Urbana,* 141 Ill.App.3d at 454, 95 Ill.Dec. 759, 490 N.E.2d at 235-36, quoting Ill.Rev.Stat.1983, ch. 68, par. 8-111(D) (now 775 ILCS 5/8-111(C) (West 2000)). "[A]nother law [(the Illinois Pension Code)] *direct[ed]* [the board of trustees of the pension fund] to make a determination which necessarily call[ed] into play the subject matter of 'human rights.' " (Emphasis added.) *Urbana,* 141 Ill.App.3d at 455, 95 Ill.Dec. 759, 490 N.E.2d at 236.

As the Second District pointed out in *Office of the Lake County State's Attorney v. Illinois Human Rights Comm'n,* 200 Ill.App.3d 151, 158, 146 Ill.Dec. 705, 558 N.E.2d 668, 673 (1990), "the exception to the [Human Rights] Act's exclusivity which was carved out in *Urbana* has been construed to be a narrow one." To come within the exception, a statute or other legislation must impose upon the tribunal the exclusive duty to decide a matter that necessarily encompasses the subject of a civil rights violation. *Village of Bellwood Board of Fire & Police Commissioners v. Human Rights Comm'n,* 184 Ill.App.3d 339, 347, 133 Ill.Dec. 810, 541 N.E.2d 1248, 1254 (1989). A mere "presumption of concurrent jurisdiction" will not suffice. The supremacy clause requires a state court to enforce a right arising from a federal law only if " 'the general jurisdiction conferred by the state law upon a state court embraced otherwise causes of action created by' " the federal statute. *Howlett,* 496 U.S. at 371 n. 17, 110 S.Ct. at 2440 n. 17, 110 L.Ed.2d at 349 n. 17, quoting *Minneapolis & St. Louis R.R. Co. v. Bombolis,* 241 U.S. 211, 222, 36 S.Ct. 595, 598, 60 L.Ed. 961, 965 (1916). Thus, a simple invocation of the supremacy clause cannot resolve the question of whether a state court must enforce a federal right; it depends on whether the state court has jurisdiction, under neutral local law, over claims of that type.

D. Discrimination Against Federal Law

Conceding that *Erickson* and other decisions of the lower federal courts do not bind us (see *Cooper,* 331 Ill.App.3d at 1100, 265 Ill.Dec. 358, 772 N.E.2d at 400), plaintiff nevertheless contends that three Supreme Court decisions that *Erickson* cites are controlling, namely, *Howlett, Testa,* and *FERC.* We find those Supreme Court decisions to be distinguishable.

In *Howlett,* 496 U.S. at 358-59, 110 S.Ct. at 2433-34, 110 L.Ed.2d at 342- 43, the plaintiff sued a school board and its officials in state court under section 1983. A Florida statute provided that school boards were "subject to suit in circuit court for tort claims 'in the same manner and to the same extent as a private individual under like circumstances.' " *Howlett,* 496 U.S. at 361, 110 S.Ct. at 2435, 110 L.Ed.2d at 343-44, quoting Fla. Stat. § 768.28(5) (1989). Under Florida law, the circuit court would have had jurisdiction over a section 1983 action against a school employee. *Howlett,* 496 U.S. at 380, 110 S.Ct. at 2445, 110 L.Ed.2d at 356. It also would have had jurisdiction over the school board if the action were based on the state's common law or statutory law. *Howlett,* 496 U.S. at 380, 110 S.Ct. at 2445, 110 L.Ed.2d at 356. The Supreme Court held that Florida's "simple refusal to take cognizance of the federal cause of action"--*a cause of action over which Florida courts clearly had jurisdiction under the state's own laws*-- "flatly violate[d] the [s]upremacy [c]lause." *Howlett,* 496 U.S. at 380-81, 110 S.Ct. at 2445, 110 L.Ed.2d at 356.

For two reasons, *Howlett* is distinguishable from the present case. First, the school board in *Howlett* was a local governmental entity, not an arm of the state, and, therefore, under federal law, it did not partake of Florida's sovereign immunity. *Howlett,* 496 U.S. at 365-66, 110 S.Ct. at 2437,

110 L.Ed.2d at 346. In the present case, the Board is an arm of the State, not a local governmental entity, and has sovereign immunity. *Board of Trustees of the University of Illinois,* 293 Ill.App.3d at 901, 228 Ill.Dec. 253, 689 N.E.2d at 127.

Second, under Florida's own laws, Florida courts had jurisdiction over section 1983 claims. *Howlett,* 496 U.S. at 380, 110 S.Ct. at 2445, 110 L.Ed.2d at 356. The Supreme Court explained:

> "When a state court refuses jurisdiction because of a neutral state rule regarding the administration of the courts, we must act with utmost caution before deciding that it is obligated to entertain the claim. [Citations.] The requirement that a state court of competent jurisdiction treat federal law as the law of the land *does not necessarily include within it a requirement that the [s]tate create a court competent to hear the case in which the federal claim is presented.* The general rule, 'bottomed deeply in belief in the importance of state control of state judicial procedure, is that *federal law takes the state courts as it finds them.*' [H. Hart, *The Relations Between State and Federal Law,* 54 Colum. L.Rev. 489, 508 (1954); citations.] The [s]tates thus have great latitude to establish the structure and jurisdiction of their own courts." (Emphases added.) *Howlett,* 496 U.S. at 372, 110 S.Ct. at 2440-41, 110 L.Ed.2d at 350-51.

Illinois courts have no jurisdiction over plaintiff's claims, regardless of whether he couches them in a state statute or federal statute, because they are "inextricably linked" to alleged civil rights violations. See *Maksimovic v. Tsogalis,* 177 Ill.2d 511, 514, 227 Ill.Dec. 98, 687 N.E.2d 21, 22 (1997); 775 ILCS 5/8-111(C) (West 2000). Federal law must take Illinois courts as it finds them. "Congress can utilize [s]tate courts to enforce [f]ederal rights, but it must

do so subject to all conditions which the [s]tate court imposes on other litigants." *Faulkner-King,* 226 Ill.App.3d at 970, 168 Ill.Dec. 874, 590 N.E.2d at 518. Illinois does not "discriminat[e] against federal causes of action" (*Howlett,* 496 U.S. at 366, 110 S.Ct. at 2437, 110 L.Ed.2d at 346); its courts do not adjudicate claims of discrimination arising from state law, either--to the extent those claims are "the subject[s] of * * * alleged civil rights violation[s]." 775 ILCS 5/8-111(C) (West 2000).

In *Testa,* 330 U.S. at 387, 67 S.Ct. at 811, 91 L.Ed. at 968-69, a federal statute provided that if a seller of goods sold them for more than the maximum allowable price, the buyer could sue the seller in any court having jurisdiction and win a penalty. The Supreme Court of Rhode Island held that the federal statute was a foreign penal statute and therefore Rhode Island's courts did not have to enforce it, even "though *their jurisdiction [was] adequate to enforce similar Rhode Island 'penal' statutes.*" (Emphasis added.) *Testa,* 330 U.S. at 388, 67 S.Ct. at 812, 91 L.Ed. at 969. The United States Supreme Court held: "[T]he Rhode Island courts have jurisdiction adequate and appropriate under established local law to adjudicate this action. Under these circumstances the [s]tate courts are not free to refuse enforcement of petitioners' claim." *Testa,* 330 U.S. at 394, 67 S.Ct. at 815, 91 L.Ed. at 972. Illinois courts do not have subject-matter jurisdiction "adequate and appropriate," under Illinois law, to adjudicate plaintiff's claims. Therefore, *Testa* is inapposite.

In *FERC,* 456 U.S. at 752, 102 S.Ct. at 2133, 72 L.Ed.2d at 542, the appellees, the State of Mississippi and Mississippi Public Service Commission, won a declaratory judgment in federal district court that provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. § § 2601 through 2645 (Supp.1980)) were

unconstitutional on the ground that they trenched on state sovereignty. The Supreme Court reversed. *FERC,* 456 U.S. at 745, 102 S.Ct. at 2130, 72 L.Ed.2d at 537. Section 210 of PURPA (16 U.S.C. § 824a-3 (1980)) "appear[ed] to be the most intrusive of PURPA's provisions." *FERC,* 456 U.S. at 759, 102 S.Ct. at 2137, 72 L.Ed.2d at 546. It provided "that 'each [s]tate regulatory authority shall, after notice and opportunity for public hearing, *implement* such rule (or revised rule)[, prescribed by the FERC,] for each electric utility for which it has ratemaking authority.' " (Emphasis in original.) *FERC,* 456 U.S. at 759, 102 S.Ct. at 2137, 72 L.Ed.2d at 547, quoting 16 U.S.C. § 824a-3(f)(1) (1980).

The Supreme Court upheld the constitutionality of section 210 of PURPA for the following reason:

> "In essence, * * * the statute and the implementing regulations simply require the Mississippi authorities to adjudicate disputes arising under the statute. Dispute resolution *of this kind* is the very type of activity customarily engaged in by the Mississippi Public Service Commission." (Emphasis added.) *FERC,* 456 U.S. at 760, 102 S.Ct. at 2137, 72 L.Ed.2d at 547.

Thus, section 210 satisfied the requirements of *Testa. FERC,* 456 U.S. at 760, 102 S.Ct. at 2138, 72 L.Ed.2d at 547. "The Mississippi Commission has jurisdiction to entertain claims analogous to those granted by PURPA * * *." *FERC,* 456 U.S. at 760, 102 S.Ct. at 2138, 72 L.Ed.2d at 547-48. *FERC* is distinguishable from the present case for the same reason that *Testa* is distinguishable: Illinois courts do not have jurisdiction to entertain state- law claims analogous to those that plaintiff asserts in this case, which are, essentially, "civil rights violations" within the meaning of section 8- 111(C) (775 ILCS 5/8-111(C) (West 2000)).

E. Court of Claims

Section 8(d) of the Court of Claims Act provides that the Court of Claims has exclusive jurisdiction over "[a]ll claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation in a civil suit, and all like claims sounding in tort against * * * the Board of Trustees of the University of Illinois." 705 ILCS 505/8(d) (West 2000). Plaintiff argues that "[n]either a private person nor [a] corporation is * * * subject to liability for [c]onstitutional violations, [section] 1983 violations, or violations of Title VI" and, therefore, contrary to the trial court's conclusion, the Court of Claims would lack jurisdiction over those claims.

It does not follow that the circuit court must necessarily have jurisdiction over claims over which the Court of Claims lacks jurisdiction. "[E]ven if the plaintiff had no remedy available in the Court of Claims, codification of public policy is for the legislature, and the lack of a remedy cannot grant jurisdiction to a circuit court over subject matter which is specifically barred by statute." *Village of Riverwoods v. BG Ltd. Partnership,* 276 Ill.App.3d 720, 728, 213 Ill.Dec. 240, 658 N.E.2d 1261, 1267 (1995).

III. CONCLUSION

For the foregoing reasons, we find that the jurisdiction of this cause is vested in the Commission. Accordingly, we affirm the trial court's judgment.

Affirmed.

KNECHT and McCULLOUGH, JJ., concur.

APPENDIX D

As Amended Through Public Act 89-679
CHAPTER 775. ILLINOIS HUMAN RIGHTS ACT

Title: An Act to promote the public health, welfare and safety of the People of the State of Illinois by preventing unlawful discrimination in employment, real property transactions, access to financial credit, and public accommodations, by authorizing the creation of a Department of Human Rights to enforce, and a Human Rights Commission to adjudicate, allegations of unlawful discrimination, and by making uniform the law with reference to unlawful discrimination through the addition, amendment and repeal of various Acts.
Cite: 775 ILCS 5/1-101 et seq.
From: Ch. 68, par. 1-101 et seq.
Source: P.A. 81-1216.
Short title: **Illinois Human Rights Act.**

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The Department does not mail hard copies of the Human Rights Act or Rules/Regulations any more. This Web page contains the entire articles of the illinois Human Rights Act. Users are encouraged to download or print the Act from this page.

Article 1. Title, Policy and Definitions

(775 ILCS 5/1-101) (From Ch. 68, par. 1-101)
Sec. 1-101. Short Title. This Act shall be known and may be cited as the Illinois Human Rights Act. (Source: P.A. 81-1216.)

(775 ILCS 5/1-102) (From Ch. 68, par. 1-102)
Sec. 1-102. **Declaration of Policy**. It is the public policy of this State:
(A) Freedom from Unlawful Discrimination. To secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap, military status, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public

accommodations.

(B) Freedom from Sexual Harassment-Employment and Higher Education. To prevent sexual harassment in employment and sexual harassment in higher education.

(C) Freedom from Discrimination Based on Citizenship Status-Employment. To prevent discrimination based on citizenship status in employment.

(D) Freedom from Discrimination Based on Familial Status-Real Estate Transactions. To prevent discrimination based on familial status in real estate transactions.

(E) Public Health, Welfare and Safety. To promote the public health, welfare and safety by protecting the interest of all people in Illinois in maintaining personal dignity, in realizing their full productive capacities, and in furthering their interests, rights and privileges as citizens of this State.

(F) Implementation of Constitutional Guarantees. To secure and guarantee the rights established by Sections 17, 18 and 19 of Article I of the Illinois Constitution of 1970.

(G) Equal Opportunity, Affirmative Action. To establish Equal Opportunity and Affirmative Action as the policies of this State in all of its decisions, programs and activities, and to assure that all State departments, boards, commissions and instrumentalities rigorously take affirmative action to provide equality of opportunity and eliminate the effects of past discrimination in the internal affairs of State government and in their relations with the public.

(H) Unfounded Charges. To protect citizens of this State against unfounded charges of unlawful discrimination, sexual harassment in employment and sexual harassment in higher education, and discrimination based on citizenship status in employment.

(Source: P.A. 87-579; 88-178.)

(775 ILCS 5/1-103) (From Ch. 68, par. 1-103)

Sec. 1-103 **General Definitions**. When used in this Act, unless the context requires otherwise, the term:

(A) Age. "Age" means the chronological age of a person who is at least 40 years old, except with regard to any practice described in Section 2-102, insofar as that practice concerns training or apprenticeship programs. In the case of training or apprenticeship programs, for the purposes of Section 2-102, "age" means the chronological age of a person who is 18 but not yet 40 years old.

(B) Aggrieved Party. "Aggrieved party" means a person who is alleged or proved to have been injured by a civil rights violation or believes he or she will be injured by a civil rights violation under Article 3 that is about to occur.

(C) Charge. "Charge" means an allegation filed with the Department by an aggrieved party or initiated by the Department under its authority.

(D) Civil Rights Violation. "Civil rights violation" includes and shall be limited to only those specific acts set forth in Sections 2-102, 2-103, 2-105, 3-102, 3-103, 3-104, 3-104.1, 3-105, 4-102, 4-103, 5-102, 5A-102 and 6-101 of this Act.

(E) Commission. "Commission" means the Human Rights Commission created by this Act.

(F) Complaint. "Complaint" means the formal pleading filed by the Department with the Commission following an investigation and finding of substantial evidence of a civil rights violation.

(G) Complainant. "Complainant" means a person including the Department who files a charge of civil rights violation with the Department or the Commission.

(H) Department. "Department" means the Department of Human Rights created by this Act.

(I) Handicap. "Handicap" means a determinable physical or mental characteristic of a person, including, but not limited to, a determinable physical characteristic which necessitates the person's use of a guide, hearing or support dog, the history of such characteristic, or the perception of such characteristic by the person complained against, which

may result from disease, injury, congenital condition of birth or functional disorder and which characteristic:

(1) For purposes of Article 2 is unrelated to the person's ability to perform the duties of a particular job or position and, pursuant to Section 2-104 of this Act, a person's illegal use of drugs or alcohol is not a handicap;

(2) For purposes of Article 3, is unrelated to the person's ability to acquire, rent or maintain a housing accommodation;

(3) For purposes of Article 4, is unrelated to a person's ability to repay;

(4) For purposes of Article 5, is unrelated to a person's ability to utilize and benefit from a place of public accommodation.

(J) Marital Status. "Marital status" means the legal status of being married, single, separated, divorced or widowed.

(J-1) Military Status. "Military status" means a person's status on active duty in the armed forces of the United States.

(K) National Origin. "National origin" means the place in which a person or one of his or her ancestors was born.

(L) Person. "Person" includes one or more individuals, partnerships, associations or organizations, labor organizations, labor unions, joint apprenticeship committees, or union labor associations, corporations, the State of Illinois and its instrumentalities, political subdivisions, units of local government, legal representatives, trustees in bankruptcy or receivers.

(M) Public Contract. "Public contract" includes every contract to which the State, any of its political subdivisions or any municipal corporation is a party.

(N) Religion. "Religion" includes all aspects of religious observance and practice, as well as belief, except that with respect to employers, for the purposes of Article 2, "religion" has the meaning ascribed to it in paragraph (F) of Section 2-101.

(O) Sex. "Sex" means the status of being male or female.

(P) Unfavorable Military Discharge. "Unfavorable military discharge" includes discharges from the Armed Forces of the United States, their Reserve components or any National Guard or Naval Militia which are classified as RE-3 or the equivalent thereof, but does not include those characterized as RE-4 or "Dishonorable".

(Q) Unlawful Discrimination. "Unlawful discrimination" means discrimination against a person because of his or her race, color, religion, national origin, ancestry, age, sex, marital status, handicap, military status, or unfavorable discharge from military service as those terms are defined in this Section.

(Source: P.A. 88-178; 88-180; 88-670, eff. 12-2-94.)

CONTENTS OF THE ACT

Article 2. Employment

(775 ILCS 5/2-101) (From Ch. 68, par. 2-101)

Sec. 2-101. **Definitions.** The following definitions are applicable strictly in the context of this Article.

(A) Employee.

(1) "Employee" includes:

(a) Any individual performing services for remuneration within this State for an employer;

(b) An apprentice;

(c) An applicant for any apprenticeship.

(2) "Employee" does not include:

(a) Domestic servants in private homes;

(b) Individuals employed by persons who are not "employers" as defined by this Act;

(c) Elected public officials or the members of their immediate personal staffs;

(d) Principal administrative officers of the State or of any political subdivision, municipal corporation or other governmental unit or agency;

(e) A person in a vocational rehabilitation facility certified under federal law who has been designated an evaluee, trainee, or work activity client.

(B) Employer.

(1) "Employer" includes:

(a) Any person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation;

(b) Any person employing one or more employees when a complainant alleges civil rights violation due to unlawful discrimination based upon his or her physical or mental handicap unrelated to ability or sexual harassment;

(c) The State and any political subdivision, municipal corporation or other governmental unit or agency, without regard to the number of employees;

(d) Any party to a public contract without regard to the number of employees;

(e) A joint apprenticeship or training committee without regard to the number of employees.

(2) "Employer" does not include any religious corporation, association, educational institution, society, or non-profit nursing institution conducted by and for those who rely upon treatment by prayer through spiritual means in accordance with the tenets of a recognized church or religious denomination with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, society or non-profit nursing institution of its activities.

(C) Employment Agency. "Employment Agency" includes both public and private employment agencies and any person, labor organization, or labor union having a hiring hall or hiring office regularly undertaking, with or

without compensation, to procure opportunities to work, or to procure, recruit, refer or place employees.

(D) Labor Organization. "Labor Organization" includes any organization, labor union, craft union, or any voluntary unincorporated association designed to further the cause of the rights of union labor which is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or apprenticeships or applications for apprenticeships, or of other mutual aid or protection in connection with employment, including apprenticeships or applications for apprenticeships.

(E) Sexual Harassment. "Sexual harassment" means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

(F) Religion. "Religion" with respect to employers includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(G) Public Employer. "Public employer" means the State, an agency or department thereof, unit of local government, school district, instrumentality or political subdivision.

(H) Public Employee. "Public employee" means an employee of the State, agency or department thereof, unit of

local government, school district, instrumentality or political subdivision. "Public employee" does not include public officers or employees of the General Assembly or agencies thereof.

(I) Public Officer. "Public officer" means a person who is elected to office pursuant to the Constitution or a statute or ordinance, or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by the Constitution or a statute or ordinance, to discharge a public duty for the State, agency or department thereof, unit of local government, school district, instrumentality or political subdivision.

(J) Eligible Bidder. "Eligible bidder" means a person who, prior to a bid opening, has filed with the Department a properly completed, sworn and currently valid employer report form, pursuant to the Department's regulations. The provisions of this Article relating to eligible bidders apply only to bids on contracts with the State and its departments, agencies, boards, and commissions, and the provisions do not apply to bids on contracts with units of local government or school districts.

(K) Citizenship Status. "Citizenship status" means the status of being:

(1) a born U.S. citizen;

(2) a naturalized U.S. citizen;

(3) a U.S. national; or

(4) a person born outside the United States and not a U.S. citizen who is not an unauthorized alien and who is protected from discrimination under the provisions of Section 1324b of Title 8 of the United States Code, as now or hereafter amended.

(Source: P.A. 86-1343; 87-579; 87-666; 87-895.)

(775 ILCS 5/2-102) (From Ch. 68, par. 2-102)

Sec. 2-102. **Civil Rights Violations** - Employment. It is a civil rights violation:

(A) Employers. For any employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination or citizenship status.

(B) Employment Agency. For any employment agency to fail or refuse to classify properly, accept applications and register for employment referral or apprenticeship referral, refer for employment, or refer for apprenticeship on the basis of unlawful discrimination or citizenship status or to accept from any person any job order, requisition or request for referral of applicants for employment or apprenticeship which makes or has the effect of making unlawful discrimination or discrimination on the basis of citizenship status a condition of referral.

(C) Labor Organization. For any labor organization to limit, segregate or classify its membership, or to limit employment opportunities, selection and training for apprenticeship in any trade or craft, or otherwise to take, or fail to take, any action which affects adversely any person's status as an employee or as an applicant for employment or as an apprentice, or as an applicant for apprenticeships, or wages, tenure, hours of employment or apprenticeship conditions on the basis of unlawful discrimination or citizenship status.

(D) Sexual Harassment. For any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment; provided, that an employer shall be responsible for sexual harassment of the employer's employees by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

(E) Public Employers. For any public employer to refuse to permit a public employee under its jurisdiction who takes

time off from work in order to practice his or her religious beliefs to engage in work, during hours other than such employee's regular working hours, consistent with the operational needs of the employer and in order to compensate for work time lost for such religious reasons. Any employee who elects such deferred work shall be compensated at the wage rate which he or she would have earned during the originally scheduled work period. The employer may require that an employee who plans to take time off from work in order to practice his or her religious beliefs provide the employer with a notice of his or her intention to be absent from work not exceeding 5 days prior to the date of absence.

(F) Training and Apprenticeship Programs. For any employer, employment agency or labor organization to discriminate against a person on the basis of age in the selection, referral for or conduct of apprenticeship or training programs.

(G) Immigration-Related Practices. For an employer to request for purposes of satisfying the requirements of Section1324a (b) of Title 8 of the United States Code, as now or hereafter amended, more or different documents than are required under such Section or to refuse to honor documents tendered that on their face reasonably appear to be genuine. It is not a civil rights violation for an employer to take any action that is required by Section 1324a of Title 8 of the United States Code, as now or hereafter amended. (Source: P.A. 87-579.)

(775 ILCS 5/2-103) (From Ch. 68, par. 2-103)

Sec. 2-103. **Arrest Record.**

(A) Unless otherwise authorized by law, it is a civil rights violation for any employer, employment agency or labor organization to inquire into or to use the fact of an arrest or criminal history record information ordered expunged, sealed or impounded under Section 5 of the

Criminal Identification Act as a basis to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment. This Section does not prohibit a State agency, unit of local government or school district, or private organization from utilizing conviction information obtained from the Department of State Police under the provisions of Section 3 of the Criminal Identification Act in evaluating the qualifications and character of an employee or a prospective employee.

(B) The prohibition against the use of the fact of an arrest contained in this Section shall not be construed to prohibit an employer, employment agency, or labor organization from obtaining or using other information which indicates that a person actually engaged in the conduct for which he or she was arrested.
(Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/2-104) (From Ch. 68, par. 2-104)

Sec. 2-104. **Exemptions.**

(A) Nothing contained in this Act shall prohibit an employer, employment agency or labor organization from:

(1) Bona Fide Qualification. Hiring or selecting between persons for bona fide occupational qualifications or any reason except those civil-rights violations specifically identified in this Article.

(2) Veterans. Giving preferential treatment to veterans and their relatives as required by the laws or regulations of the United States or this State or a unit of local government.

(3) Unfavorable Discharge From Military Service. Using unfavorable discharge from military service as a valid employment criterion when authorized by federal law or regulation or when a position of employment involves the exercise of fiduciary responsibilities as defined by rules and

regulations which the Department shall adopt.

(4) Ability Tests. Giving or acting upon the results of any professionally developed ability test provided that such test, its administration, or action upon the results, is not used as a subterfuge for or does not have the effect of unlawful discrimination.

(5) Merit and Retirement Systems.

(a) Applying different standards of compensation, or different terms, conditions or privileges of employment pursuant to a merit or retirement system provided that such system or its administration is not used as a subterfuge for or does not have the effect of unlawful discrimination.

(b) Effecting compulsory retirement of any employee who has attained 65 years of age and who, for the 2-year period immediately preceding retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans of the employer of such employee, which equals, in the aggregate, at least $44,000. If any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits) or if the employees contribute to any such plan or make rollover contributions, the retirement benefit shall be adjusted in accordance with regulations prescribed by the Department, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(c) Until January 1, 1994, effecting compulsory retirement of any employee who has attained 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education as defined by Section

1201(a) of the Higher Education Act of 1965.

(6) Training and Apprenticeship programs. Establishing an educational requirement as a prerequisite to selection for a training or apprenticeship program, provided such requirement does not operate to discriminate on the basis of any prohibited classification except age.

(7) Police and Firefighter Retirement. Imposing a mandatory retirement age for firefighters or law enforcement officers if prior to December 31, 1993, the law enforcement officer or firefighter has attained the age of retirement in effect under applicable state or local law on March 3, 1983 and if such retirement action is taken pursuant to a bona fide retirement plan. This paragraph (7) shall not apply with respect to any cause of action arising under the Illinois Human Rights Act as in effect prior to December 3, 1987 (the effective date of Public Act 85-949).

(8) Police and Firefighter/Paramedic Appointment. Failing or refusing to hire or to discharge any individual because of such individual's age if such action is taken with respect to the employment of an individual as a firefighter/paramedic or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable State or local law, which provides a maximum age hiring limitation or for mandatory retirement, in effect on or before March 3, 1983. As used in this paragraph (8):

(a) "Firefighter/paramedic" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, or to provide emergency medical services, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

(b) "Law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or

convicted of criminal offenses, including an employee engaged in this activity who is transferred to a supervisory or administrative position. The provisions of this paragraph (8) shall remain in effect until December 31, 1993 or until similar provisions in Section 4 of the federal Age Discrimination in Employment Act of 1967 (29 U.S. Code 623) are deleted or repealed, whichever is later.

(9) Citizenship Status. Making legitimate distinctions based on citizenship status if specifically authorized or required by State or federal law.

(B) With respect to any employee who is subject to a collective bargaining agreement:

(a) which is in effect on June 30, 1986,

(b) which terminates after January 1, 1987,

(c) any provision of which was entered into by a labor organization as defined by Section 6 (d) (4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 (d)(4)), and

(d) which contains any provision that would be superseded by this amendatory Act of 1987 (Public Act 85-748), such amendatory Act of 1987 shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

(C) (1) For purposes of this Act, the term "handicap" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when an employer acts on the basis of such use.

(2) Paragraph (1) shall not apply where an employee or applicant for employment:

(a) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(b) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(c) is erroneously regarded as engaging in such use, but is not engaging in such use. It shall not be a violation of this Act for an employer to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subparagraph (a) or (b) is no longer engaging in the illegal use of drugs.

(3) An employer:

(a) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(b) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(c) may require that employees behave in conformance with the requirements established under the federal Drug-Free Workplace Act of 1988 (11 U.S.C. 701 et seq.) and the Drug Free Workplace Act;

(d) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such employer holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(e) may, with respect to federal regulations regarding alcohol and the illegal use of drugs, require that:

(i) employees comply with the standards established in such regulations of the United States Department of Defense, if the employees of the employer are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the employer who are employed in such positions (as defined in the regulations of the Department of Defense);

(ii) employees comply with the standards established in such regulations of the Nuclear Regulatory

Commission, if the employees of the employer are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the employer who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(iii) employees comply with the standards established in such regulations of the United States Department of Transportation, if the employees of the employer are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the employer who are employed in such positions (as defined in the regulations of the United States Department of Transportation).

(4) For purposes of this Act, a test to determine the illegal use of drugs shall not be considered a medical examination. Nothing in this Act shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(5) Nothing in this Act shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by an employer subject to the jurisdiction of the United States Department of Transportation of authority to:

(a) test employees of such employer in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(b) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to subparagraph (a) from safety-sensitive duties in

implementing paragraph (3).
(Source: P.A. 87-348; 87-579; 87-895; 88-180.)

(775 ILCS 5/2-105) (From Ch. 68, par. 2-105)

Sec. 2-105. **Equal Employment Opportunities;** Affirmative Action.

(A) Public Contracts. Every party to a public contract and every eligible bidder shall:

(1) Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;

(2) Comply with the procedures and requirements of the Department's regulations concerning equal employment opportunities and affirmative action;

(3) Provide such information, with respect to its employees and applicants for employment, and assistance as the Department may reasonably request;

(4) Have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (iii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the vendor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department and the Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of this Act. A copy of the policies shall be provided to the Department upon request.

(B) State Agencies. Every State executive department, State agency, board, commission, and instrumentality shall:

(1) Comply with the procedures and requirements of the Department's regulations concerning equal employment opportunities and affirmative action;

(2) Provide such information and assistance as the Department may request.

(3) Establish, maintain, and carry out a continuing affirmative action plan consistent with this Act and the regulations of the Department designed to promote equal opportunity for all State residents in every aspect of agency personnel policy and practice. For purposes of these affirmative action plans, the race and national origin categories to be included in the plans are: African American, Hispanic or Latino, Native American, Asian, and any other category as required by Department rule. This plan shall include a current detailed status report:

(a) indicating, by each position in State service, the number, percentage, and average salary of individuals employed by race, national origin, sex and disability, and any other category that the Department may require by rule;

(b) identifying all positions in which the percentage of the people employed by race, national origin, sex and disability, and any other category that the Department may require by rule, is less than four-fifths of the percentage of each of those components in the State work force;

(c) specifying the goals and methods for increasing the percentage by race, national origin, sex and disability, and any other category that the Department may require by rule, in State positions;

(d) indicating progress and problems toward meeting equal employment opportunity goals, including, if applicable, but not limited to, Department of Central Management Services recruitment efforts, publicity, promotions, and use of options designating positions by linguistic abilities;

(e) establishing a numerical hiring goal for the employment of qualified persons with disabilities in the agency as a whole, to be based on the proportion of people with work disabilities in the Illinois labor force as reflected

in the most recent decennial Census.

(4) If the agency has 1000 or more employees, appoint a full-time Equal Employment Opportunity officer, subject to the Department's approval, whose duties shall include:

(a) Advising the head of the particular State agency with respect to the preparation of equal employment opportunity programs, procedures, regulations, reports, and the agency's affirmative action plan.

(b) Evaluating in writing each fiscal year the sufficiency of the total agency program for equal employment opportunity and reporting thereon to the head of the agency with recommendations as to any improvement or correction in recruiting, hiring or promotion needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed to cooperate fully or who are in violation of the program.

(c) Making changes in recruitment, training and promotion programs and in hiring and promotion procedures designed to eliminate discriminatory practices when authorized.

(d) Evaluating tests, employment policies, practices and qualifications and reporting to the head of the agency and to the Department any policies, practices and qualifications that have unequal impact by race, national origin as required by Department rule, sex or disability or any other category that the Department may require by rule, and to assist in the recruitment of people in underrepresented classifications. This function shall be performed in cooperation with the State Department of Central Management Services.

(e) Making any aggrieved employee or applicant for employment aware of his or her remedies under this Act. In any meeting, investigation, negotiation, conference, or other proceeding between a State employee and an Equal Employment Opportunity officer, a State employee (1) who

is not covered by a collective bargaining agreement and (2) who is the complaining party or the subject of such proceeding may be accompanied, advised and represented by (1) an attorney licensed to practice law in the State of Illinois or (2) a representative of an employee organization whose membership is composed of employees of the State and of which the employee is a member. A representative of an employee, other than an attorney, may observe but may not actively participate, or advise the State employee during the course of such meeting, investigation, negotiation, conference or other proceeding. Nothing in this Section shall be construed to permit any person who is not licensed to practice law in Illinois to deliver any legal services or otherwise engage in any activities that would constitute the unauthorized practice of law. Any representative of an employee who is present with the consent of the employee, shall not, during or after termination of the relationship permitted by this Section with the State employee, use or reveal any information obtained during the course of the meeting, investigation, negotiation, conference or other proceeding without the consent of the complaining party and any State employee who is the subject of the proceeding and pursuant to rules and regulations governing confidentiality of such information as promulgated by the appropriate State agency. Intentional or reckless disclosure of information in violation of these confidentiality requirements shall constitute a Class B misdemeanor.

(5) Establish, maintain and carry out a continuing sexual harassment program that shall include the following:

(a) Develop a written sexual harassment policy that includes at a minimum the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the agency's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available

through the Department and the Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of this Act. The policy shall be reviewed annually.

(b) Post in a prominent and accessible location and distribute in a manner to assure notice to all agency employees without exception the agency's sexual harassment policy. Such documents may meet, but shall not exceed, the 6th grade literacy level. Distribution shall be effectuated within 90 days of the effective date of this amendatory Act of 1992 and shall occur annually thereafter.

(c) Provide training on sexual harassment prevention and the agency's sexual harassment policy as a component of all ongoing or new employee training programs.

(6). Notify the Department 30 days before effecting any layoff. Once notice is given, the following shall occur:

(a) No layoff may be effective earlier than 10 working days after notice to the Department, unless an emergency layoff situation exists.

(b) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur must notify each employee targeted for layoff, the employee's union representative (if applicable), and the State Dislocated Worker Unit at the Department of Commerce and Community Affairs.

(c) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur must conform to applicable collective bargaining agreements.

(d) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur should notify each employee targeted for layoff that transitional assistance may be available to him or her under the Economic Dislocation and Worker Adjustment Assistance Act administered by the Department of

Commerce and Community Affairs. Failure to give such notice shall not invalidate the layoff or postpone its effective date.

As used in this subsection (B), "disability" shall be defined in rules promulgated under the Illinois Administrative Procedure Act.

(C) Civil Rights Violations.

It is a civil rights violation for any public contractor or eligible bidder to:

(1) fail to comply with the public contractor's or eligible bidder's duty to refrain from unlawful discrimination and discrimination based on citizenship status in employment under subsection (A) (1) of this Section; or

(2) fail to comply with the public contractor's or eligible bidder's duties of affirmative action under subsection (A) of this Section, provided however, that the Department has notified the public contractor or eligible bidder in writing by certified mail that the public contractor or eligible bidder may not be in compliance with affirmative action requirements of subsection (A). A minimum of 60 days to comply with the requirements shall be afforded to the public contractor or eligible bidder before the Department may issue formal notice of non-compliance.

(Source: P.A. 88-498; 89-370, eff. 8-18-95.)

CONTENTS OF THE ACT

Article 3. Real Estate Transactions

(775 ILCS 5/3-101) (From Ch. 68, par. 3-101)

Sec. 3-101. **Definitions**. The following definitions are applicable strictly in the context of this Article:

(A) Real Property. "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds,

interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

(B) Real Estate Transaction. "Real estate transaction" includes the sale, exchange, rental or lease of real property. "Real estate transaction" also includes the brokering or appraising of residential real property and the making or purchasing of loans or providing other financial assistance:

(1) for purchasing, constructing, improving, repairing or maintaining a dwelling; or

(2) secured by residential real estate.

(C) Housing Accommodations. "Housing accommodation" includes any improved or unimproved real property, or part thereof, which is used or occupied, or is intended, arranged or designed to be used or occupied, as the home or residence of one or more individuals.

(D) Real Estate Broker or Salesman. "Real estate broker or salesman" means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself or herself out as engaged in these.

(E) Familial Status. "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) a parent or person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded by this Article against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(F) Conciliation. "Conciliation" means the attempted

resolution of issues raised by a charge, or by the investigation of such charge, through informal negotiations involving the aggrieved party, the respondent and the Department.

(G) Conciliation Agreement. "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(H) Covered Multifamily Dwellings. As used in Section 3-102.1, "covered multifamily dwellings" means:

(1) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(2) ground floor units in other buildings consisting of 4 or more units.

(Source: P.A. 86-820; 86-910; 86-1028.)

(775 ILCS 5/3-102) (From Ch. 68, par. 3-102)

Sec. 3-102. **Civil Rights Violations**; Real Estate Transactions

It is a civil rights violation for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman, because of unlawful discrimination or familial status, to

(A) Transaction. Refuse to engage in a real estate transaction with a person or to discriminate in making available such a transaction;

(B) Terms. Alter the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

(C) Offer. Refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(D) Negotiation. Refuse to negotiate for a real estate transaction with a person;

(E) Representations. Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property

listing to his or her attention, or to refuse to permit him or her to inspect real property;

(F) Publication of Intent. Print, circulate, post, mail, publish or cause to be so published a written or oral statement, advertisement or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which expresses any limitation founded upon, or indicates, directly or indirectly, an intent to engage in unlawful discrimination;

(G) Listings. Offer, solicit, accept, use or retain a listing of real property with knowledge that unlawful discrimination or discrimination on the basis of familial status in a real estate transaction is intended.
(Source: P.A. 86-910.)

(775 ILCS 5/3-102.1) (From Ch. 68, par. 3-102.1)

Sec. 3-102.1. **Handicap**.

(A) It is a civil rights violation to refuse to sell or rent or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that buyer or renter, a handicap of a person residing or intending to reside in that dwelling after it is sold, rented or made available or a handicap of any person associated with the buyer or renter.

(B) It is a civil rights violation to alter the terms, conditions or privileges of sale or rental of a dwelling or the provision of services or facilities in connection with such dwelling because of a person's handicap or a handicap of any person residing or intending to reside in that dwelling after it is sold, rented or made available, or a handicap of any person associated with that person.

(C) It is a civil rights violation:

(1) to refuse to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such

modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before modifications, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained;

(2) to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(3) in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, to fail to design and construct those dwellings in such a manner that:

(a) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(b) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons

in wheelchairs; and

(c) all premises within such dwellings contain the following features of adaptive design:

(i) an accessible route into and through the dwelling;

(ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) reinforcements in bathroom walls to allow later installation of grab bars; and

(iv) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(D) Compliance with the appropriate standards of the Illinois Accessibility Code for adaptable dwelling units (71 Illinois Administrative Code Section 400.350 (e) 1-6) suffices to satisfy the requirements of subsection (C)(3)(c).

(E) If a unit of local government has incorporated into its law the requirements set forth in subsection (C) (3), compliance with its law shall be deemed to satisfy the requirements of that subsection. (F) A unit of local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of subsection (C)(3) are met.

(G) The Department shall encourage, but may not require, units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with subsection (C)(3), and shall provide technical assistance to units of local government and other persons to implement the requirements of subsection (C)(3).

(H) Nothing in this Act shall be construed to require the Department to review or approve the plans, designs or construction of all covered multifamily dwellings to determine whether the design and construction of such

dwellings are consistent with the requirements of subsection (C)(3).

(I) Nothing in subsections (E), (F), (G) or (H) shall be construed to affect the authority and responsibility of the Department to receive and process complaints or otherwise engage in enforcement activities under State and local law.

(J) Determinations by a unit of local government under subsections (E) and (F) shall not be conclusive in enforcement proceedings under this Act if those determinations are not in accord with the terms of this Act.

(K) Nothing in this Section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of others or would result in substantial physical damage to the property of others.

(Source: P.A. 86-910.)

(775 ILCS 5/3-103) (from Ch. 68, par. 3-103)

Sec. 3-103. **Blockbusting**. It is a civil rights violation for any person to:

(A) Solicitation. Solicit for sale, lease, listing or purchase any residential real estate within this State, on the grounds of loss of value due to the present or prospective entry into the vicinity of the property involved of any person or persons of any particular race, color, religion, national origin, ancestry, age, sex, marital status, familial status or handicap.

(B) Statements. Distribute or cause to be distributed, written material or statements designed to induce any owner of residential real estate in this State to sell or lease his or her property because of any present or prospective changes in the race, color, religion, national origin, ancestry, age, sex, marital status, familial status or handicap of residents in the vicinity of the property involved.

(C) Creating Alarm. Intentionally create alarm, among residents of any community, by transmitting

communications in any manner, including a telephone call whether or not conversation thereby ensues, with a design to induce any owner of residential real estate in this state to sell or lease his or her property because of any present or prospective entry into the vicinity of the property involved of any person or persons of any particular race, color, religion, national origin, ancestry, age, sex, marital status, familial status or handicap.
(Source: P.A. 86-910.)

(775 ILCS 5/3-104.1) (from Ch. 68, par. 3-104.1)

Sec. 3-104.1. **Refusal to sell or rent** because a person has a guide, hearing or support dog. It is a civil rights violation for the owner or agent of any housing accommodation to:

(A) refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny property to any blind, hearing impaired or physically handicapped person because he has a guide, hearing or support dog; or

(B) discriminate against any blind, hearing impaired or physically handicapped person in the terms, conditions, or privileges of sale or rental property, or in the provision of services or facilities in connection therewith, because he has a guide, hearing or support dog; or

(C) require, because a blind, hearing impaired or physically handicapped person has a guide, hearing or support dog, an extra charge in a lease, rental agreement, or contract of purchase or sale, other than for actual damage done to the premises by the dog.
(Source: P.A. 83-93.)

(775 ILCS 5/3-105) (from Ch. 68, par. 3-105)

Sec. 3-105. **Restrictive Covenants**.

(A) Agreements. Every provision in an oral agreement or a written instrument relating to real property which purports

to forbid or restrict the conveyance, encumbrance, occupancy or lease thereof on the basis of race, color, religion, or national origin is void.

(B) Limitations.

(1) Every condition, restriction or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, color, religion, or national origin is void.

(2) This Section shall not apply to a limitation of use on the basis of religion of real property held by a religious institution or organization or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.

(C) Civil Rights Violations. It is a civil rights violation to insert in a written instrument relating to real property a provision that is void under this Section or to honor or attempt to honor such a provision in the chain of title. (Source: P.A. 81-1216.)

(775 ILCS 5/3-106) (from Ch. 68, par. 3-106)

Sec. 3-106. **Exemptions**.) Nothing contained in Section 3-102 shall prohibit:

(A) Private Sales of Single Family Homes. Any sale of a single family home by its owner so long as the following criteria are met:

(1) The owner does not own or have a beneficial interest in more than three single family homes at the time of the sale;

(2) The owner or a member of his or her family was the last current resident of the home;

(3) The home is sold without the use in any manner of the sales or rental facilities or services of any real estate broker or salesman, or of any employee or agent of any real estate broker or salesman;

(4) The home is sold without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of paragraph (F) of Section 3-102.

(B) Apartments. Rental of a housing accommodation in a building which contains housing accommodations for not more than five families living independently of each other, if the lessor or a member of his or her family resides in one of the housing accommodations;

(C) Private Rooms. Rental of a room or rooms in a private home by an owner if he or she or a member of his or her family resides therein or, while absent for a period of not more than twelve months, if he or she or a member of his or her family intends to return to reside therein;

(D) Reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(E) Religious Organizations. A religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of a dwelling which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

(F) Sex. Restricting the rental of rooms in a housing accommodation to persons of one sex.

(G) Persons Convicted of Drug-Related Offenses. Conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the federal Controlled Substances Act (21 U.S.C. 802).

(H) Persons engaged in the business of furnishing appraisals of real property from taking into consideration

factors other than those based on unlawful discrimination or familial status in furnishing appraisals.

(I) Housing for Older Persons. No provision in this Article regarding familial status shall apply with respect to housing for older persons.

(1) As used in this Section, "housing for older persons" means housing:

(a) provided under any State or Federal program that the Department determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by persons 55 years of age or older and:

(i) at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older;

(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subdivision (c); and

(iii) the housing facility or community complies with rules adopted by the Department for verification of occupancy, which shall: (aa) provide for verification by reliable surveys and affidavits; and (bb) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). These surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

(2) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(a) persons residing in such housing as of the effective date of this amendatory Act of 1989 who do not meet the age requirements of subsections (1)(b) or (c); provided, that new occupants of such housing meet the age

requirements of subsections (1)(b) or (c) of this subsection; or

(b) unoccupied units; provided, that such units are reserved for occupancy by persons who meet the age requirements of subsections (1)(b) or (c) of this subsection.

(3) (a) A person shall not be held personally liable for monetary damages for a violation of this Article if the person reasonably relied, in good faith, on the application of the exemption under this subsection (I) relating to housing for older persons.

(b) For the purposes of this item (3), a person may show good faith reliance on the application of the exemption only by showing that:

(i) the person has no actual knowledge that the facility or community is not, or will not be, eligible for the exemption; and

(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for the exemption.

(Source: P.A. 89-520, eff. 7-18-96.)

CONTENTS OF THE ACT

Article 4. Financial Credit

(775 ILCS 5/4-101) (from Ch. 68, par. 4-101)

Sec. 4-101. **Definitions**) The following definitions are applicable strictly in the context of this Article:

(A) Credit Card. "Credit card" has the meaning set forth in Section 2.03 of the Illinois Credit Card Act.

(B) Financial Institution. "Financial institution" means any bank, credit union, insurance company, mortgage banking company or savings and loan association which operates or has a place of business in this State.

(C) Loan. "Loan" includes, but is not limited to, the providing of funds, for consideration, which are sought for:

(1) the purpose of purchasing, constructing, improving, repairing, or maintaining a housing accommodation as that term is defined in paragraph (C) of Section 3-101; or

(2) any commercial or industrial purposes.

(D) Varying Terms. "Varying the terms of a loan" includes, but is not limited to, the following practices:

(1) Requiring a greater down payment than is usual for the particular type of a loan involved.

(2) Requiring a shorter period of amortization than is usual for the particular type of loan involved.

(3) Charging a higher interest rate than is usual for the particular type of loan involved.

(4) An under appraisal of real estate or other item of property offered as security.

(Source: P.A. 84-880.)

(775 ILCS 5/4-102) (from Ch. 68, par. 4-102)

Sec. 4-102. **Civil Rights Violations: Loans.** It shall be a civil rights violation for any financial institution, on the grounds of unlawful discrimination, to:

(A) Denial of Services. Deny any person any of the services normally offered by such an institution.

(B) Modification of Services. Provide any person with any service which is different from, or provided in a different manner than, that which is provided to other persons similarly situated.

(C) Loan Terms. Deny or vary the terms of a loan.

(D) Property Location. Deny or vary the terms of a loan on the basis that a specific parcel of real estate offered as security is located in a specific geographical area.

(E) Consideration of Income. Deny or vary the terms of a loan without having considered all of the regular and dependable income of each person who would be liable for repayment of the loan.

(F) Lending Standards. Utilize lending standards that

have no economic basis and which constitute unlawful discrimination.
(Source: P.A. 81-1216.)

(775 ILCS 5/4-103) (from Ch. 68, par. 4-103)

Sec. 4-103. **Credit Cards.** It is a civil rights violation for a person who offers credit cards to the public in this State:

(A) Denial. To refuse to issue a credit card, upon proper application, on the basis of unlawful discrimination. (B) Reasons for Rejection. To fail to inform an applicant for a credit card, upon request, of the reason that his or her application for a credit has been rejected. (Source: P.A. 81-1216.)

(775 ILCS 5/4-104) (from Ch. 68, par. 4-104)

Sec. 4-104. **Exemptions)** Nothing contained in this Article shall prohibit:

(A) Sound Underwriting Practices. A financial institution from considering sound underwriting practices in contemplation of any loan to any person. Such practices shall include:

(1) The willingness and the financial ability of the borrower to repay the loan.

(2) The market value of any real estate or other item of property proposed as security for any loan.

(3) Diversification of the financial institution's investment portfolio.

(B) Credit-worthiness Information; Credit Systems. A financial institution or a person who offers credit cards from:

(1) making an inquiry of the applicant's age, permanent residence, immigration status, or any additional information if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-

worthiness as provided in regulations of the Department; (2) using any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Department, except that in the operation of such system the age of an applicant over the age of 62 years may not be assigned a negative factor or value.

(C) Special Credit Programs. A financial institution from refusing to extend credit when required to by or pursuant to any:

(1) credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(2) credit assistance program administered by a nonprofit organization for its members of an economically disadvantaged class of persons;

(3) special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed by the Department in its regulations.

(Source: P.A. 81-1267.)

CONTENTS OF THE ACT

Article 5. Public Accommodations

(775 ILCS 5/5-101) (from Ch. 68, par. 5-101)

Sec. 5-101. **Definitions)** The following definitions are applicable strictly in the context of this Article:

(A) Place of Public Accommodation.

(1) "Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public. (2) By way

of example, but not of limitation, "place of public accommodation" includes facilities of the following types: inns, restaurants, eating houses, hotels, soda fountains, soft drink parlors, taverns, roadhouses, barber shops, department stores, clothing stores, hat stores, shoe stores, bathrooms, restrooms, theatres, skating rinks, public golf courses, public golf driving ranges, concerts, cafes, bicycle rinks, elevators, ice cream parlors or rooms, railroads, omnibuses, busses, stages, airplanes, street cars, boats, funeral hearses, crematories, cemeteries, and public conveyances on land, water, or air, public swimming pools and other places of public accommodation and amusement.

(B) Operator. "Operator" means any owner, lessee, proprietor, manager, superintendent, agent, or occupant of a place of public accommodation or an employee of any such person or persons.

(C) Public Official. "Public official" means any officer or employee of the state or any agency thereof, including state political subdivisions, municipal corporations, park districts, forest preserve districts, educational institutions and schools.

(Source: P.A. 81-1267.)

(775 ILCS 5/5-102) (from Ch. 68, par. 5-102)

Sec. 5-102. **Civil Rights Violations: Public Accommodations.** It is a civil rights violation for any person on the basis of unlawful discrimination to:

(A) Enjoyment of Facilities. Deny or refuse to another the full and equal enjoyment of the facilities and services of any public place of accommodation;

(B) Written Communications. Directly or indirectly, as the operator of a place of public accommodation, publish, circulate, display or mail any written communication, except a private communication sent in response to a specific inquiry, which the operator knows is to the effect that any of the facilities of the place of public

accommodation will be denied to any person or that any person is unwelcome, objectionable or unacceptable because of unlawful discrimination;

(C) Public Officials. Deny or refuse to another, as a public official, the full and equal enjoyment of the accommodations, advantage, facilities or privileges of the official's office or services or of any property under the official's care because of unlawful discrimination.
(Source: P.A. 81-1216.)

(775 ILCS 5/5-103) (from Ch. 68, par. 5-103)

Sec. 5-103. **Exemption**. Nothing in this Article shall apply to:

(A) Private Club. A private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the establishment are made available to the customers or patrons of another establishment that is a place of public accommodation.

(B) Facilities Distinctly Private. Any facility, as to discrimination based on sex, which is distinctly private in nature such as restrooms, shower rooms, bath houses, health clubs and other similar facilities for which the Department, in its rules and regulations, may grant exemptions based on bona fide considerations of public policy. (C) Inn, Hotel, Rooming House. Any facility, as to discrimination based on sex, which restricts the rental of rooms to individuals of one sex.
(Source: P.A. 85-567.)

CONTENTS OF THE ACT

Article 5A. Higher Education

(775 ILCS 5/5A-101) (from Ch. 68, par. 5A-101)

Sec. 5A-101. **Definitions**. The following definitions are

applicable strictly in the content of this Article, except that the term "sexual harassment in higher education" as defined herein has the meaning herein ascribed to it whenever that term is used anywhere in this Act.

(A) Institution of Higher Education. "Institution of higher education" means any publicly or privately operated university, college, community college, junior college, business or vocational school, or other educational institution offering degrees and instruction beyond the secondary school level.

(B) Degree. "Degree" means any designation, appellation, series of letters or words or other symbols which signifies or purports to signify that the recipient thereof has satisfactorily completed an organized academic, business or vocational program of study offered beyond the secondary school level.

(C) Student. "Student" means any individual admitted to or applying for admission to an institution of higher education, or enrolled on a full or part time basis in a course or program of academic, business or vocational instruction offered by or through an institution of higher education.

(D) Higher Education Representative. "Higher education representative" means and includes the president, chancellor or other holder of any executive office on the administrative staff of an institution of higher education, and any member of the faculty of an institution of higher education, including but not limited to a dean or associate or assistant dean, a professor or associate or assistant professor, and a full or part time instructor or visiting professor, including a graduate assistant or other student who is employed on a temporary basis of less than full time as a teacher or instructor of any course or program of academic, business or vocational instruction offered by or through an institution of higher education.

(E) Sexual Harassment in Higher Education. "Sexual

harassment in higher education" means any unwelcome sexual advances or requests for sexual favors made by a higher education representative to a student, or any conduct of a sexual nature exhibited by a higher education representative toward a student, when such conduct has the purpose of substantially interfering with the student's educational performance or creating an intimidating, hostile or offensive educational environment; or when the higher education representative either explicitly or implicitly makes the student's submission to such conduct a term or condition of, or uses the student's submission to or rejection of such conduct as a basis for determining:

(1) Whether the student will be admitted to an institution of higher education;

(2) The educational performance required or expected of the student;

(3) The attendance or assignment requirements applicable to the student;

(4) To what courses, fields of study or programs, including honors and graduate programs, the student will be admitted;

(5) What placement or course proficiency requirements are applicable to the student;

(6) The quality of instruction the student will receive;

(7) What tuition or fee requirements are applicable to the student;

(8) What scholarship opportunities are available to the student;

(9) What extracurricular teams the student will be a member of or in what extracurricular competitions the student will participate;

(10) Any grade the student will receive in any examination or in any course or program of instruction in which the student is enrolled;

(11) The progress of the student toward successful completion of or graduation from any course or program of

instruction in which the student is enrolled; or

(12) What degree, if any, the student will receive.
(Source: P.A. 83-91.)

(775 ILCS 5/5A-102) (from Ch. 68, par. 5A-102)

Sec. 5A-102. **Civil Rights Violations: Higher Education**. It is a civil rights violation:

(A) Higher Education Representative. For any higher education representative to commit or engage in sexual harassment in higher education.

(B) Institution of Higher Education. For any institution of higher education to fail to take remedial action, or to fail to take appropriate disciplinary action against a higher education representative employed by such institution, when such institution knows that such higher education representative was committing or engaging in or committed or engaged in sexual harassment in higher education.
(Source: P.A. 83-91.)

CONTENTS OF THE ACT

Article 6. Additional Civil Rights Violations

(775 ILCS 5/6-101) (from Ch. 68, par. 6-101)

Sec. 6-101. **Additional Civil Rights Violations**. It is a civil rights violation for a person, or for two or more persons to conspire, to:

(A) Retaliation. Retaliate against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination, sexual harassment in employment or sexual harassment in higher education, discrimination based on citizenship status in employment, or because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act;

(B) Aiding and Abetting; Coercion. Aid, abet, compel or

coerce a person to commit any violation of this Act; (C) Interference. Willfully interfere with the performance of a duty or the exercise of a power by the Commission or one of its members or representatives or the Department or one of its officers or employees.

(D) Definitions. For the purposes of this Section, "sexual harassment" and "citizenship status" shall have the same meaning as defined in Section 2-101 of this Act.
(Source: P.A. 87-579.)

CONTENTS OF THE ACT

Article 7. Department of Human Rights; Duties; Procedures

(775 ILCS 5/7-101) (from Ch. 68, par. 7-101)

Sec. 7-101. **Powers and Duties**. In addition to other powers and duties prescribed in this Act, the Department shall have the following powers:

(A) Rules and Regulations. To adopt, promulgate, amend, and rescind rules and regulations not inconsistent with the provisions of this Act pursuant to the Administrative Procedure Act.

(B) Charges. To issue, receive, investigate, conciliate, settle, and dismiss charges filed in conformity with this Act.

(C) Compulsory Process. To request subpoenas as it deems necessary for its investigations.

(D) Complaints. To file complaints with the Commission in conformity with this Act.

(E) Judicial Enforcement. To seek temporary relief and to enforce orders of the Commission in conformity with this Act.

(F) Equal Employment Opportunities. To take such action as may be authorized to provide for equal employment opportunities and affirmative action.

(G) Recruitment; Research; Public Communication; Advisory Councils. To engage in such recruitment, research and public communication and create such advisory councils as may be authorized to effectuate the purposes of this Act.

(H) Coordination with Federal and Local Agencies. To coordinate its activities with federal and local agencies in conformity with this Act.

(I) Public Grants; Private Gifts. To accept public grants and private gifts as may be authorized.

(J) Education and Training. To implement a formal and unbiased program of education and training for all employees assigned to investigate and conciliate charges under Articles 7A and 7B. The training program shall include the following:

(1) substantive and procedural aspects of the investigation and conciliation positions;

(2) current issues in human rights law and practice;

(3) lectures by specialists in substantive areas related to human rights matters;

(4) orientation to each operational unit of the Department and Commission;

(5) observation of experienced Department investigators and attorneys conducting conciliation conferences, combined with the opportunity to discuss evidence presented and rulings made;

(6) the use of hypothetical cases requiring the Department investigator and conciliation conference attorney to issue judgments as a means to evaluating knowledge and writing ability;

(7) writing skills;

(8) computer skills, including but not limited to word processing and document management. A formal, unbiased and ongoing professional development program including, but not limited to, the above-noted areas shall be implemented to keep Department investigators and attorneys informed of recent developments and issues and to assist

them in maintaining and enhancing their professional competence.
(Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/7-101.1)

Sec. 7-101.1. **Request for Review.**

(A) Jurisdiction. The Chief Legal Counsel of the Department shall have jurisdiction to hear and determine requests for review of

(1) decisions of the Director to dismiss a charge;

(2) notices of default issued by the Director; and

(3) dismissals for refusal to accept a settlement offer.

Any final order entered by the Chief Legal Counsel under this Section is appealable in accordance with paragraph (A)(1) of Section 8-111.

(B) Review. When a request for review is properly filed, the Chief Legal Counsel of the Department may consider the Director's report, any argument and supplemental evidence timely submitted, and the results of any additional investigation conducted by the Director in response to the request. In his or her discretion, the Chief Legal Counsel of the Department may designate a staff attorney to conduct an investigation into the factual basis of the matter at issue.

(C) Default Order. When a respondent fails to file a timely request for review of a notice of default, or the default is sustained on review, the Commission shall enter a default order and set a hearing on damages.

(D) Time Period Toll. Proceedings on requests for review shall toll the time limitation established in paragraph (G)(1) of Section 7A-102 or paragraph (G) of Section 7B-102 from the date on which the Director's notice of dismissal or default is issued to the date on which the order of the Chief Legal Counsel of the Department is entered.

(E) This amendatory Act of 1995 applies to causes of action filed on or after January 1, 1996.

(F) This amendatory Act of 1996 applies to causes of action

filed on or after January 1, 1996.
(Source: P.A. 89-370, eff. 8-18-95; 89-520, eff. 7-18-96.)

(775 ILCS 5/7-105) (from Ch. 68, par. 7-105)

Sec. 7-105. **Equal Employment Opportunities; Affirmative Action.** In order to establish and effectuate the policies of equal employment opportunity and affirmative action, the Department shall, with respect to state executive departments, boards, commissions and instrumentalities and any party to a public contract:

(A) Policies; Rules; Regulations. Establish equal employment opportunity and affirmative action policies, rules and regulations which specify plans, programs and reporting procedures. Such rules may provide for exemptions or modifications as may be necessary to assure the continuity of federal requirements in State agencies supported in whole or in part by federal funds.

(B) Minimum Compliance Criteria. Establish minimum compliance criteria and procedures for evaluating equal employment opportunity and affirmative action programs and plans.

(C) Technical Assistance. Provide technical assistance, training, and advice for the establishment and implementation of required programs.

(D) Meetings. Hold meetings at least annually with the head of each State agency and when necessary with any party to a public contract to:

(1) Review equal employment opportunity plans and progress, performance and problems in meeting equal opportunity goals.

(2) Recommend appropriate changes to the plans and procedures and the methods employed to implement the plans.

(E) Report. Include within its annual report, filed pursuant to Section 25 of the Civil Administrative Code, the progress, performance, and problems of meeting equal

opportunity goals, and the identity of any State agency which fails to comply with the requirements of this Act and the circumstances surrounding such violation.

(F) Personnel Operations. Periodically review personnel operations of State agencies to assure their conformity with this Act and the agency's plan.

(G) Equal Employment Opportunity Officers. Approve the appointment of equal employment opportunity officers hired pursuant to subparagraph (4) of paragraph (B) of Section 2-105.

(H) Enforcement. Require State agencies which fail to meet their affirmative action and equal employment opportunity goals by equal employment opportunity category to establish necessary training programs for preparation and promotion of the category of individuals affected by the failure. An agency required to establish training programs under this subsection shall do so in cooperation with the Department of Central Management Services as provided in Section 67.31 of the Civil Administrative Code of Illinois. The Department by rule or regulation shall provide for the implementation of this subsection. Such rules or regulations shall prescribe but not be limited to the following:

(1) the circumstances and conditions which constitute an agency's failure to meet its affirmative action and equal employment opportunity goals;

(2) the time period for measuring success or failure in reaching affirmative action and equal employment opportunity goals; and

(3) that training programs shall be limited to State employees. This subsection shall not be construed to conflict with any contract between the State and any party which is approved and ratified by or on September 11, 1990.

(Source: P.A. 86-1411; 86-1475.)

(775 ILCS 5/7-105a) (from Ch. 68, par. 7-105a)

Sec. 7-105a.

(a) In order to facilitate the implementation of the policies of equal employment opportunity and affirmative action, the State executive departments, boards, commissions and instrumentalities shall, on and after the effective date of this amendatory Act of 1983, on all forms used to collect information from individuals for official purposes, when such forms request information concerning the race or ethnicity of an individual by providing spaces for the designation of that individual as "white" or "black", or the semantic equivalent thereof, provide an additional space for a designation as "Hispanic".

(b) Whenever a State executive department, board, commission or instrumentality is required to supply information to the Department concerning the racial or ethnic composition of its employees, clients or other groups of individuals on or after the effective date of this amendatory Act of 1983, the agency supplying such information shall supply the information by categories of "white", "black", and "Hispanic", or the semantic equivalent thereof, unless otherwise required by the Department.

(Source: P.A. 83-648.)

(775 ILCS 5/7-105b) (from Ch. 68, par. 7-105b)

Sec. 7-105b. **Compliance** with State Employment Records Act. The Department, as required by and for the purposes of the State Employment Records Act, shall, on a fiscal year basis, report the total number of persons employed within the State work force that are under the monitoring jurisdiction of the Department and provide any other information necessary to facilitate an accurate compilation of the entire State work force as defined and required by that Act. The State Employment Records (SER) report shall be maintained and kept on file within the

Department.
(Source: P.A. 87-1211.)

(775 ILCS 5/7-106) (from Ch. 68, par. 7-106)

Sec. 7-106. **Recruitment; Research; Public Communication.** For the purpose of promoting equal employment and housing opportunities and eliminating unlawful discrimination, sexual harassment in employment and sexual harassment in higher education, the Department shall have authority to:

(A) Recruitment. Cooperate with public and private organizations, as well as the Department of Central Management Services, in encouraging individuals in underrepresented classifications to seek employment in state government.

(B) Publications; Research. Issue publications, conduct research, and make surveys as it deems necessary.

(C) Public Hearings. Hold public hearings to obtain information from the general public on the effectiveness of the state's equal employment opportunity program and the protection against unlawful discrimination, sexual harassment in employment and sexual harassment in higher education afforded by this Act and to accept public recommendations concerning changes in the program and the Act for inclusion in its annual report.

(D) Promotion of Communication and Goodwill. Establish a program to cooperate with civic, religious and educational organizations in order to improve human communication and understanding, foster equal opportunities in employment and housing, and promote and encourage communication, goodwill and interfaith and interracial harmony.
(Source: P.A. 85-1229; 86-1343.)

(775 ILCS 5/7-107) (from Ch. 68, par. 7-107)

Sec. 7-107. **Advisory Councils**. The Department shall

have authority, as the need requires, to create local or statewide advisory councils to aid in effectuating the purposes of this Act, to limit the duration of a council's existence, and to empower a council to:

(A) Study. Study and report on problems of unlawful discrimination and equal employment opportunity.

(B) Goodwill. Foster through community effort or otherwise goodwill among the groups and segments of the population of Illinois.

(C) Recommendations. Make recommendations to the Department for the development of policies and practices that will aid in carrying out the purposes of this Act.

(D) Support Services. Receive technical and clerical assistance and reimbursement of actual expenses from the Department.

(Source: P.A. 81-1216.)

(775 ILCS 5/7-108) (from Ch. 68, par. 7-108)

Sec. 7-108. **Local Departments, Commissions.**

(A) Authority. A political subdivision, or two or more political subdivisions acting jointly, may create a local department or commission as it or they see fit to promote the purposes of this Act and to secure for all individuals within the jurisdiction of the political subdivision or subdivisions freedom from unlawful discrimination, sexual harassment in employment and sexual harassment in higher education. The provisions of any ordinance enacted by any municipality or county which prohibits broader or different categories of discrimination than are prohibited by this Act are not invalidated or affected by this Act.

(B) Concurrent Jurisdiction. When the Department and a local department or commission have concurrent jurisdiction over a complaint, either may transfer the complaint to the other under regulations established by the Department.

(C) Exclusive Jurisdiction. When the Department or a local department or commission has jurisdiction over a

complaint and the other does not, the Department or local department or commission without jurisdiction may transfer the complaint to the other under regulations established by the Department.

(D) To secure and guarantee the rights established by Sections 17, 18 and 19 of Article I of the Illinois Constitution, any ordinance, resolution, rule or regulation of any county, municipality or other unit of local government or of any local department or commission which prohibits, restricts, narrows or limits the housing choice of any person is unenforceable and void. Nothing in this amendatory Act of 1981 prohibits a unit of local government from making special outreach efforts to inform members of minority groups of housing opportunities available in areas of majority white concentration and make similar efforts to inform the majority white population of available housing opportunities located in areas of minority concentration. This paragraph is applicable to home rule units as well as non-home rule units. Pursuant to Article VII, Section 6, paragraph (i) of the Illinois Constitution, this amendatory Act of 1981 is a limitation of the power of home rule units.

(Source: P.A. 85-1229; 86-1343.)

(775 ILCS 5/7-109) (from Ch. 68, par. 7-109)

Sec. 7-109. **Federal Departments and Agencies.**

(A) Utilization of Department Facilities and Employees. The Department in its discretion and for the purpose of carrying out its functions, may permit the utilization of its facilities and employees by federal departments and agencies in the investigation of charges over which the Department has jurisdiction. The Department shall be authorized to be reimbursed by the federal government for the reasonable value of such services rendered.

(B) Cooperative Undertakings. In order to effect cooperative undertakings in the reduction of unlawful

discrimination, the Department has the power and authority for and on behalf of the state to make contractual agreements, within the scope and authority of this Act, with any agency of the federal government, and such agreements may include provisions under which the federal department or agency shall refrain from processing a charge in Illinois in any cases or class of cases specified in these agreements. (Source: P.A. 81-1216.)

(775 ILCS 5/7-109.1) (from Ch. 68, par. 7-109.1)

Sec. 7-109.1. **Federal or State Court Proceedings**. The Department may administratively close a charge pending before the Department if the issues which are the basis of the charge are being litigated in a State or federal court proceeding. (Source: P.A. 86-1343.)

(775 ILCS 5/7-110) (from Ch. 68, par. 7-110)

Sec. 7-110. Attorney General) When authorized by this Act to take part in a judicial proceeding in any court in this state, the Department shall proceed only through the Attorney General of Illinois or with the Attorney General's approval.
(Source: P.A. 81-1216.)

(775 ILCS 5/7-111) (from Ch. 68, par. 7-111)

Sec. 7-111. Public Grants; Private Gifts. The Department is authorized to accept public grants and private gifts and bequests so long as the conditions of the grant, gift or bequest are not inconsistent with the purposes of this Act. (Source: P.A. 81-1216.)

(775 ILCS 5/7-112)

Sec. 7-112. Automated Processing of Charges and Complaints. On or before December 31, 1996, the Department and the Commission shall jointly prepare an electronic data processing and telecommunications plan for the purpose of automating the processing of charges and

complaints.
(Source: P.A. 89-370, eff. 8-18-95.)

CONTENTS OF THE ACT

Article 7A. Department of Human Rights; Procedures Under Articles 2, 4, 5, 5A and 6

(775 ILCS 5/7A-101) (from Ch. 68, par. 7A-101)
Sec. 7A-101. The procedures specified in this Article shall apply solely to Articles 2, 4, 5, 5A and 6. (Source: P.A. 86-910.)

(775 ILCS 5/7A-102) (from Ch. 68, par. 7A-102)
Sec. 7A-102. **Procedures**:
(A) Charge.
(1) Within 180 days after the date that a civil rights violation allegedly has been committed, a charge in writing under oath or affirmation may be filed with the Department by an aggrieved party or issued by the Department itself under the signature of the Director.
(2) The charge shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged civil rights violation.
(B) Notice, and Response, and Review of Charge. The Department shall, within 10 days of the date on which the charge was filed, serve a copy of the charge on the respondent. This period shall not be construed to be jurisdictional. The charging party and the respondent may each file a position statement and other materials with the Department regarding the charge of alleged discrimination within 60 days of receipt of the notice of the charge. The position statements and other materials filed shall remain confidential unless otherwise agreed to by the party

providing the information and shall not be served on or made available to the other party during pendency of a charge with the Department. The Department shall require the respondent to file a verified response to the allegations contained in the charge within 60 days of receipt of the notice of the charge. The respondent shall serve a copy of its response on the complainant or his representative. All allegations contained in the charge not timely denied by the respondent shall be deemed admitted, unless the respondent states that it is without sufficient information to form a belief with respect to such allegation. The Department shall issue a notice of default directed to any respondent who fails to file a verified response to a charge within 60 days of receipt of the notice of the charge, unless the respondent can demonstrate good cause as to why such notice should not issue. Within 30 days of receipt of the respondent's response, the complainant may file a reply to said response and shall serve a copy of said reply on the respondent or his representative. A party shall have the right to supplement his response or reply at any time that the investigation of the charge is pending. The Department shall, within 10 days of the date on which the charge was filed, and again no later than 335 days thereafter, send by certified or registered mail written notice to the complainant and to the respondent informing the complainant of the right to file a complaint with the Human Rights Commission under subparagraph (2) of paragraph (G), including in such notice the dates within which the complainant may exercise this right. In the notice the Department shall notify the complainant that the charge of civil rights violation will be dismissed with prejudice and with no right to further proceed if a written complaint is not timely filed with the Commission by the complainant pursuant to subparagraph (2) of paragraph (G) or by the Department pursuant to subparagraph (1) of paragraph (G).

(B-1) Mediation. The complainant and respondent may agree to voluntarily submit the charge to mediation without

waiving any rights that are otherwise available to either party pursuant to this Act and without incurring any obligation to accept the result of the mediation process. Nothing occurring in mediation shall be disclosed by the Department or admissible in evidence in any subsequent proceeding unless the complainant and the respondent agree in writing that such disclosure be made.

(C) Investigation.

(1) After the respondent has been notified, the Department shall conduct a full investigation of the allegations set forth in the charge.

(2) The Director or his or her designated representatives shall have authority to request any member of the Commission to issue subpoenas to compel the attendance of a witness or the production for examination of any books, records or documents whatsoever.

(3) If any witness whose testimony is required for any investigation resides outside the State, or through illness or any other good cause as determined by the Director is unable to be interviewed by the investigator or appear at a fact finding conference, his or her testimony or deposition may be taken, within or without the State, in the same manner as is provided for in the taking of depositions in civil cases in circuit courts.

(4) Upon reasonable notice to the complainant and the respondent, the Department shall conduct a fact finding conference prior to 365 days after the date on which the charge was filed, unless the Director has determined whether there is substantial evidence that the alleged civil rights violation has been committed or the charge has been dismissed for lack of jurisdiction. If the parties agree in writing, the fact finding conference may be held at a time after the 365 day limit. Any party's failure to attend the conference without good cause shall result in dismissal or default. The term "good cause" shall be defined by rule promulgated by the Department. A notice of dismissal or

default shall be issued by the Director and shall notify the relevant party that a request for review may be filed in writing with the Chief Legal Counsel of the Department within 30 days of receipt of notice of dismissal or default.

(D) Report.

(1) Each charge shall be the subject of a report to the Director. The report shall be a confidential document subject to review by the Director, authorized Department employees, the parties, and, where indicated by this Act, members of the Commission or their designated hearing officers.

(2) Upon review of the report, the Director shall determine whether there is substantial evidence that the alleged civil rights violation has been committed. The determination of substantial evidence is limited to determining the need for further consideration of the charge pursuant to this Act and includes, but is not limited to, findings of fact and conclusions, as well as the reasons for the determinations on all material issues and questions of credibility. Substantial evidence is evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.

(a) If the Director determines that there is no substantial evidence, the charge shall be dismissed by order of the Director and the complainant notified that he or she may seek review of the dismissal order before the Chief Legal Counsel of the Department. The complainant shall have 30 days from receipt of notice to file a request for review by the Chief Legal Counsel of the Department.

(b) If the Director determines that there is substantial evidence, he or she shall designate a Department employee who is an attorney licensed to practice in Illinois to endeavor to eliminate the effect of the alleged civil rights violation and to prevent its repetition by means of conference and conciliation.

(E) Conciliation.

(1) When the Department determines that a formal conciliation conference is necessary, the complainant and respondent shall be notified of the time and place of the conference by registered or certified mail at least 10 days prior thereto and either or both parties shall appear at the conference in person or by attorney.

(2) The place fixed for the conference shall be within 35 miles of the place where the civil rights violation is alleged to have been committed.

(3) Nothing occurring at the conference shall be disclosed by the Department unless the complainant and respondent agree in writing that such disclosure be made.

(F) Complaint.

(1) When there is a failure to settle or adjust any charge through conciliation, the Department shall prepare a written complaint, under oath or affirmation, stating the nature of the civil rights violation substantially as alleged in the charge previously filed and the relief sought on behalf of the aggrieved party.

(2) The complaint shall be filed with the Commission.

(G) Time Limit.

(1) When a charge of a civil rights violation has been properly filed, the Department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed except in cases in which the order was procured by fraud or duress. Any such order shall be duly served upon both the complainant and the respondent.

(2) Between 365 and 395 days after the charge is filed, or such longer period agreed to in writing by all parties, the aggrieved party may file a complaint with the Commission, if the Director has not sooner issued a report

and determination pursuant to paragraphs (D)(1) and (D)(2) of this Section. The form of the complaint shall be in accordance with the provisions of paragraph (F). The aggrieved party shall notify the Department that a complaint has been filed and shall serve a copy of the complaint on the Department on the same date that the complaint is filed with the Commission.

(3) If an aggrieved party files a complaint with the Human Rights Commission pursuant to paragraph (2) of this subsection, or if the time period for filing a complaint has expired, the Department shall immediately cease its investigation and dismiss the charge of civil rights violation. Any final order entered by the Chief Legal Counsel under this Section is appealable in accordance with paragraph (A)(1) of Section 8-111. Failure to immediately cease an investigation and dismiss the charge of civil rights violation as provided in this paragraph (3) constitutes grounds for entry of an order by the circuit court permanently enjoining the investigation. The Department may also be liable for any costs and other damages incurred by the respondent as a result of the action of the Department.

(4) The Department shall stay any administrative proceedings under this Section after the filing of a civil action by or on behalf of the aggrieved party under any federal or State law seeking relief with respect to the alleged civil rights violation.

(H) This amendatory Act of 1995 applies to causes of action filed on or after January 1, 1996.

(I) This amendatory Act of 1996 applies to causes of action filed on or after January 1, 1996.

(Source: P.A. 89-370, eff. 8-18-95; 89-520, eff. 7-18-96.)

(775 ILCS 5/7A-103) (from Ch. 68, par. 7A-103)

Sec. 7A-103. **Settlement.**

(A) Circumstances. A settlement of any charge prior to the filing of a complaint may be effectuated at any time

upon agreement of the parties and the approval of the Department. A settlement of any charge after the filing of complaint shall be effectuated as specified in Section 8-105 (A) (2) of this Act.

(B) Form. Settlements of charges prior to the filing of complaints shall be reduced to writing by the Department, signed by the parties, and submitted by the Department to the Commission for approval. Settlements of charges after the filing of complaints shall be effectuated as specified in Section 8-105 (A) (2) of this Act.

(C) Violation.

(1) When either party alleges that a settlement order has been violated, the Department shall conduct an investigation into the matter.

(2) Upon finding substantial evidence to demonstrate that a settlement has been violated, the Department shall file notice of a settlement order violation with the Commission and serve all parties.

(D) Dismissal For Refusal To Accept Settlement Offer. The Department shall dismiss a charge if it is satisfied that:

(1) the respondent has eliminated the effects of the civil rights violation charged and taken steps to prevent its repetition; or

(2) the respondent offers and the complainant declines to accept terms of settlement which the Department finds are sufficient to eliminate the effects of the civil rights violation charged and prevent its repetition.

(3) When the Department dismisses a charge under this Section it shall notify the complainant that he or she may seek review of the dismissal order before the Chief Legal Counsel of the Department. The complainant shall have 30 days from receipt of notice to file a request for review by the Chief Legal Counsel of the Department.

(4) In determining whether the respondent has eliminated the effects of the civil rights violation charged, or has offered terms of settlement sufficient to eliminate

same, the Department shall consider the extent to which the respondent has either fully provided, or reasonably offered by way of terms of settlement, as the case may be, the relevant relief available to the complainant under Section 8-108 of this Act.

(E) This amendatory Act of 1995 applies to causes of action filed on or after January 1, 1996.
(Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/7A-104) (from Ch. 68, par. 7A-104)

Sec. 7A-104. **Judicial Proceedings.**

(A) Temporary Relief.

(1) At any time after a charge is filed, the Department or complainant may petition the appropriate court for temporary relief, pending final determination of the proceedings under this Act, including an order or judgment restraining the respondent from doing or causing any act which would render ineffectual an order which the Commission may enter with respect to the complainant. Whether it is brought by the Department or by the complainant, the petition shall contain a certification by the Director that the particular matter presents exceptional circumstances in which irreparable injury will result from a civil rights violation in the absence of temporary relief. (2) The petition shall be filed in the circuit court for the county in which the respondent resides or transacts business or in which the alleged violation took place, and the proceedings shall be governed by Part I of Article XI of the "Code of Civil Procedure", as amended. Except as provided in subsection (A) (3), the court may grant temporary relief or a temporary restraining order as it deems just and proper.

(3) When the petition is based upon a civil rights violation as defined in Article 3 of this Act, the relief or restraining order entered by the court shall not exceed 5 days unless:

(a) A longer period is agreed to by the respondent; or

(b) The court finds that there is substantial evidence to demonstrate that the respondent has engaged in unlawful discrimination.

(B) Expedited Proceedings.

(1) A complainant or the Department at the request of the complainant may at any time petition the circuit court for expedited proceedings. Except as to causes the circuit court considers to be of greater importance, consideration of petitions for expedited proceedings under this subsection shall take precedence on the docket over all other causes and be assigned for hearing at the earliest practicable date and expedited in every way.

(2) Venue for a petition filed under this subsection shall lie in the county where the respondent resides or is found or where the alleged violation was committed.

(3) Any petition filed by the complainant shall name the Department, Commission and the respondent. Any petition filed by the Department, upon request of the complainant, shall name the Commission and the respondent. (4) If the circuit court determines that the complainant is likely to die before the termination of the proceedings under this Act, it may order the proceedings expedited. When an order for expedited proceedings is issued, the processing of the complainant's charge by the Department and Commission shall take precedence over all matters except older matters of the same character. Where such order is issued, the Department, the Commission, any panel of the Commission, or any Commission hearing officer shall be authorized to shorten any time period, other than the 180 day charge filing period set by this Act or by rule. If such an order is issued and the complainant is before the Department, the Department shall immediately appoint an investigator if an investigator has not been appointed and shall in 90 days either file a complaint or

order that no complaint be issued. If the Department fails to make a determination within 90 days the complainant shall have 30 days to file his complaint with the Commission.

(C) Enforcement of Commission Orders. When authorized by this Act, the Department, at the request of the Commission, may take whatever action may be authorized for the enforcement of Commission orders. (Source: P.A. 86-910; 86-1028.)

CONTENTS OF THE ACT

Article 7B. Department of Human Rights; Procedures Under Article 3

(775 ILCS 5/7B-101) (from Ch. 68, par. 7B-101)

Sec. 7B-101. The procedures specified in this Article shall apply solely to Article 3. (Source: P.A. 86-910.)

(775 ILCS 5/7B-102) (from Ch. 68, par. 7B-102)

Sec. 7B-102. **Procedures.**

(A) Charge.

(1) Within one year after the date that a civil rights violation allegedly has been committed or terminated, a charge in writing under oath or affirmation may be filed with the Department by an aggrieved party or issued by the Department itself under the signature of the Director.

(2) The charge shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged civil rights violation.

(B) Notice and Response to Charge.

(1) The Department shall serve notice upon the aggrieved party acknowledging such charge and advising the aggrieved party of the time limits and choice of forums provided under this Act. The Department shall, within 10

days of the date on which the charge was filed or the identification of an additional respondent under paragraph (2) of this subsection, serve on the respondent a copy of the charge along with a notice identifying the alleged civil rights violation and advising the respondent of the procedural rights and obligations of respondents under this Act and shall require the respondent to file a verified response to the allegations contained in the charge within 30 days. The respondent shall serve a copy of its response on the complainant or his representative. All allegations contained in the charge not timely denied by the respondent shall be deemed admitted, unless the respondent states that it is without sufficient information to form a belief with respect to such allegation. The Department shall issue a notice of default directed to any respondent who fails to file a verified response to a charge within 30 days of the date on which the charge was filed, unless the respondent can demonstrate good cause as to why such notice should not issue. Within 10 days of the date he receives the respondent's response, the complainant may file his reply to said response. If he chooses to file a reply, the complainant shall serve a copy of said reply on the respondent or his representative. A party shall have the right to supplement his response or reply at any time that the investigation of the charge is pending. (2) A person who is not named as a respondent in a charge, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under subsection (B), to such person, from the Department. Such notice, in addition to meeting the requirements of subsections (A) and (B), shall explain the basis for the Department's belief that a person to whom the notice is addressed is properly joined as a respondent.

(C) Investigation.

(1) The Department shall conduct a full investigation of the allegations set forth in the charge and complete such

investigation within 100 days after the filing of the charge, unless it is impracticable to do so.

(2) If the Department is unable to complete the investigation within 100 days after the charge is filed, the Department shall notify the complainant and respondent in writing of the reasons for not doing so.

(3) The Director or his or her designated representative shall have authority to request any member of the Commission to issue subpoenas to compel the attendance of a witness or the production for examination of any books, records or documents whatsoever.

(4) If any witness whose testimony is required for any investigation resides outside the State, or through illness or any other good cause as determined by the Director is unable to be interviewed by the investigator or appear at a fact finding conference, his or her testimony or deposition may be taken, within or without the State, in the same manner as provided for in the taking of depositions in civil cases in circuit courts.

(5) Upon reasonable notice to the complainant and the respondent, the Department shall conduct a fact finding conference, unless prior to 100 days from the date on which the charge was filed, the Director has determined whether there is substantial evidence that the alleged civil rights violation has been committed. A party's failure to attend the conference without good cause may result in dismissal or default. A notice of dismissal or default shall be issued by the Director and shall notify the relevant party that a request for review may be filed in writing with the Chief Legal Counsel of the Department within 30 days of receipt of notice of dismissal or default.

(D) Report.

(1) Each investigated charge shall be the subject of a report to the Director. The report shall be a confidential document subject to review by the Director, authorized Department employees, the parties, and, where indicated by

this Act, members of the Commission or their designated hearing officers. The report shall contain:

(a) the names and dates of contacts with witnesses;

(b) a summary and the date of correspondence and other contacts with the aggrieved party and the respondent;

(c) a summary description of other pertinent records;

(d) a summary of witness statements; and

(e) answers to questionnaires. A final report under this paragraph may be amended if additional evidence is later discovered.

(2) Upon review of the report and within 100 days of the filing of the charge, unless it is impracticable to do so, the Director shall determine whether there is substantial evidence that the alleged civil rights violation has been committed or is about to be committed. If the Director is unable to make the determination within 100 days after the filing of the charge, the Director shall notify the complainant and respondent in writing of the reasons for not doing so.

(a) If the Director determines that there is no substantial evidence, the charge shall be dismissed and the aggrieved party notified that he or she may seek review of the dismissal order before the Commission. The aggrieved party shall have 30 days from receipt of notice to file a request for review by the Chief Legal Counsel of the Department. The Director shall make public disclosure of each such dismissal.

(b) If the Director determines that there is substantial evidence, he or she shall immediately issue a complaint on behalf of the aggrieved party pursuant to subsection (F).

(E) Conciliation.

(1) During the period beginning with the filing of charge and ending with the filing of a complaint or a dismissal by the Department, the Department shall, to the

extent feasible, engage in conciliation with respect to such charge. When the Department determines that a formal conciliation conference is feasible, the aggrieved party and respondent shall be notified of the time and place of the conference by registered or certified mail at least 7 days prior thereto and either or both parties shall appear at the conference in person or by attorney.

(2) The place fixed for the conference shall be within 35 miles of the place where the civil rights violation is alleged to have been committed.

(3) Nothing occurring at the conference shall be made public or used as evidence in a subsequent proceeding for the purpose of proving a violation under this Act unless the complainant and respondent agree in writing that such disclosure be made.

(4) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Department and Commission.

(5) A conciliation agreement may provide for binding arbitration of the dispute arising from the charge. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(6) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Department determines that disclosure is not required to further the purpose of this Act.

(F) Complaint.

(1) When there is a failure to settle or adjust any charge through a conciliation conference and the charge is not dismissed, the Department shall prepare a written complaint, under oath or affirmation, stating the nature of the civil rights violation and the relief sought on behalf of the aggrieved party. Such complaint shall be based on the final investigation report and need not be limited to the facts or grounds alleged in the charge filed under subsection (A).

(2) The complaint shall be filed with the Commission.

(3) The Department may not issue a complaint under this Section regarding an alleged civil rights violation after the beginning of the trial of a civil action commenced by the aggrieved party under any State or federal law, seeking relief with respect to that alleged civil rights violation.

(G) Time Limit.

(1) When a charge of a civil rights violation has been properly filed, the Department, within 100 days thereof, unless it is impracticable to do so, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued. Any such order shall be duly served upon both the aggrieved party and the respondent.

(2) The Director shall make available to the aggrieved party and the respondent, at any time, upon request following completion of the Department's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(H) This amendatory Act of 1995 applies to causes of action filed on or after January 1, 1996.

(Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/7B-103) (from Ch. 68, par. 7B-103)

Sec. 7B-103. **Settlement.**

(A) Circumstances. A settlement of any charge prior to the filing of a complaint may be effectuated at any time upon agreement of the parties and the approval of the Department. A settlement of any charge after the filing of complaint shall be effectuated as specified in Section 8-105 (A) (2) of this Act.

(B) Form. Settlements of charges prior to the filing of complaints shall be reduced to writing by the Department, signed by the parties, and submitted by the Department to the Commission for approval. Settlements of charges after the filing of complaints shall be effectuated as specified in

Section 8-105 (A) (2) of this Act.

(C) Violation.

(1) When either party alleges that a settlement order has been violated, the Department shall conduct an investigation into the matter.

(2) Upon finding substantial evidence to demonstrate that a settlement has been violated, the Department shall refer the matter to the Attorney General for enforcement in the circuit court in which the respondent or complainant resides or transacts business or in which the alleged violation took place.

(D) Dismissal For Refusal To Accept Settlement Offer. The Department may dismiss a charge if it is satisfied that:

(1) the respondent has eliminated the effects of the civil rights violation charged and taken steps to prevent its repetition; or

(2) the respondent offers and the aggrieved party declines to accept terms of settlement which the Department finds are sufficient to eliminate the effects of the civil rights violation charged and prevent its repetition. (3) When the Department dismisses a charge under this Section it shall notify the complainant that he or she may seek review of the dismissal order before the Commission. The aggrieved party shall have 30 days from receipt of notice to file a request for review by the Chief Legal Counsel of the Department.

(4) In determining whether the respondent has eliminated the effects of the civil rights violation charged, or has offered terms of settlement sufficient to eliminate same, the Department shall consider the extent to which the respondent has either fully provided, or reasonably offered by way of terms of settlement, as the case may be, the relevant relief available to the aggrieved party under Section 8B-104 of this Act with the exception of civil penalties.

(E) This amendatory Act of 1995 applies to causes of

action filed on or after January 1, 1996.
(Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/7B-104) (from Ch. 68, par. 7B-104)
Sec. 7B-104. **Judicial Proceedings.**
(A) Temporary Relief.

(1) At any time after a charge is filed, the Department or aggrieved party may petition the appropriate court for temporary relief, pending final determination of the proceedings under this Act, including an order or judgment restraining the respondent from doing or causing any act which would render ineffectual an order which the Commission may enter with respect to the aggrieved party. Whether it is brought by the Department or by the aggrieved party, the petition shall contain a certification by the Director that the particular matter presents exceptional circumstances in which irreparable injury will result from a civil rights violation in the absence of temporary relief. The filing of a petition under this paragraph does not affect the initiation or continuation of administrative proceedings under Section 7A-102 and Section 8A-102 of this Act.

(2) The petition shall be filed in the circuit court for the county in which the respondent resides or transacts business or in which the alleged violation took place, and the proceedings shall be governed by Part 1 of Article XI of the "Code of Civil Procedure", as amended. Except as provided in subsection (A) (3), the court may grant temporary relief or a temporary restraining order as it deems just and proper.

(3) When the petition is based upon a civil rights violation as defined in Article 3 of this Act, the duration of the relief or restraining order entered by the court shall not exceed 5 days unless:

(a) A longer period is agreed to by the respondent; or

(b) The court finds that there is substantial

evidence to demonstrate that the respondent has engaged in unlawful discrimination. (B) Enforcement of Commission Orders. When authorized by this Act, the Department, at the request of the Commission, may take whatever action may be authorized for the enforcement of Commission orders.
(Source: P.A. 86-910.)

CONTENTS OF THE ACT

Article 8. Illinois Human Rights Commission

(775 ILCS 5/8-101) (from Ch. 68, par. 8-101)

Sec. 8-101. **Illinois Human Rights Commission.**

(A) Creation; Appointments.

The Human Rights Commission is created to consist of 13 members appointed by the Governor with the advice and consent of the Senate. No more than 7 members shall be of the same political party. The Governor shall designate one member as chairperson. All appointments shall be in writing and filed with the Secretary of State as a public record.

(B) Terms. Of the members first appointed, 4 shall be appointed for a term to expire on the third Monday of January, 1981, and 5 (including the Chairperson) shall be appointed for a term to expire on the third Monday of January, 1983. Notwithstanding any provision of this Section to the contrary, the term of office of each member of the Illinois Human Rights Commission is abolished on July 29, 1985, but the incumbent members shall continue to exercise all of the powers and be subject to all of the duties of members of the Commission until their respective successors are appointed and qualified. Subject to the provisions of subsection (A), of the 9 members appointed under Public Act 84-115, effective July 29, 1985, 5 members shall be appointed for terms to expire on the third

Monday of January, 1987, and 4 members shall be appointed for terms to expire on the third Monday of January, 1989; and of the 4 additional members appointed under Public Act 84-1084, effective December 2, 1985, two shall be appointed for a term to expire on the third Monday of January, 1987, and two members shall be appointed for a term to expire on the third Monday of January, 1989. Thereafter, each member shall serve for a term of 4 years and until his or her successor is appointed and qualified; except that any member chosen to fill a vacancy occurring otherwise than by expiration of a term shall be appointed only for the unexpired term of the member whom he or she shall succeed and until his or her successor is appointed and qualified.

(C) Vacancies.

(1) In the case of vacancies on the Commission during a recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate when he or she shall appoint a person to fill the vacancy. Any person so nominated and confirmed by the Senate shall hold office for the remainder of the term and until his or her successor is appointed and qualified.

(2) If the Senate is not in session at the time this Act takes effect, the Governor shall make temporary appointments to the Commission as in the case of vacancies.

(3) Vacancies in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission. Except when authorized by this Act to proceed through a 3 member panel, a majority of the members of the Commission then in office shall constitute a quorum.

(D) Compensation. The Chairperson of the Commission shall be compensated at the rate of $22,500 per year, or as set by the Compensation Review Board, whichever is greater, during his or her service as Chairperson, and each other member shall be compensated at the rate of $20,000

per year, or as set by the Compensation Review Board, whichever is greater. In addition, all members of the Commission shall be reimbursed for expenses actually and necessarily incurred by them in the performance of their duties.
(Source: P.A. 84-1308.)

(775 ILCS 5/8-102) (from Ch. 68, par. 8-102)

Sec. 8-102. **Powers and Duties.** In addition to other powers and duties prescribed in this Act, the Commission shall have the following powers and duties:

(A) Meetings. To meet and function at any place within the State.

(B) Offices. To establish and maintain offices in Springfield and Chicago.

(C) Employees. To select and fix the compensation of such technical advisors and employees as it may deem necessary pursuant to the provisions of "The Personnel Code".

(D) Hearing Officers. To select and fix the compensation of hearing officers who shall be attorneys duly licensed to practice law in this State and full time employees of the Commission. A formal and unbiased training program for hearing officers shall be implemented. The training program shall include the following:

(1) substantive and procedural aspects of the hearing officer position;

(2) current issues in human rights law and practice;

(3) lectures by specialists in substantive areas related to human rights matters; (4) orientation to each operational unit of the Department and Commission;

(5) observation of experienced hearing officers conducting hearings of cases, combined with the opportunity to discuss evidence presented and rulings made;

(6) the use of hypothetical cases requiring the hearing officer to issue judgments as a means to evaluating

knowledge and writing ability;

(7) writing skills;

(8) computer skills, including but not limited to word processing and document management. A formal, unbiased and ongoing professional development program including, but not limited to, the above-noted areas shall be implemented to keep hearing officers informed of recent developments and issues and to assist them in maintaining and enhancing their professional competence.

(E) Rules and Regulations. To adopt, promulgate, amend, and rescind rules and regulations not inconsistent with the provisions of this Act pursuant to the Administrative Procedure Act.

(F) Compulsory Process. To issue and authorize requests for enforcement of subpoenas and other compulsory process established by this Act.

(G) Decisions. Through a panel of three members designated by the Chairperson on a random basis, to hear and decide by majority vote complaints filed in conformity with this Act and to approve proposed settlements.

(H) Rehearings. To order, by a vote of 6 members, rehearing of its decisions by the entire Commission in conformity with this Act.

(I) Judicial Enforcement. To authorize requests for judicial enforcement of its orders in conformity with this Act. (J) Opinions. To publish its decisions in timely fashion to assure a consistent source of precedent.

(K) Public Grants; Private Gifts. To accept public grants and private gifts as may be authorized.

(L) Interpreters. To appoint at the expense of the Commission a qualified sign language interpreter whenever a hearing impaired person is a party or witness at a public hearing.

(M) Automated Processing Plan. To prepare an electronic data processing and telecommunications plan jointly with the Department in accordance with Section 7-

112.

(N) The provisions of this amendatory Act of 1995 amending subsection (G) of this Section apply to causes of action filed on or after January 1, 1996.
(Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/8-103) (from Ch. 68, par. 8-103)

Sec. 8-103. **Request for Review.**

(A) Applicability. This Section does not apply to any cause of action filed on or after January 1, 1996. (A-1) Jurisdiction. The Commission, through a panel of three members, shall have jurisdiction to hear and determine requests for review of

(1) decisions of the Department to dismiss a charge; and

(2) notices of default issued by the Department. In each instance, the Department shall be the respondent.

(B) Review. When a request for review is properly filed, the Commission may consider the Department's report, any argument and supplemental evidence timely submitted, and the results of any additional investigation conducted by the Department in response to the request. In its discretion, the Commission may designate a hearing officer to conduct a hearing into the factual basis of the matter at issue.

(C) Default Order. When a respondent fails to file a timely request for review of a notice of default, or the default is sustained on review, the Commission shall enter a default order and set a hearing on damages.

(D) Time Period Toll. Proceedings on requests for review shall toll the time limitation established in paragraph (G) of Section 7A-102 from the date on which the Department's notice of dismissal or default is issued to the date on which the Commission's order is entered. (Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/8-104) (from Ch. 68, par. 8-104)

Sec. 8-104. Compulsory Process.

(A) Subpoenas. Any member of the Commission may issue a subpoena:

(1) At the request of the Department to facilitate its investigation; or

(2) At the request of a party to a proceeding which is the subject of a complaint pending before the Commission.

(B) Form. The subpoena shall be on a form prescribed by the Commission in its rules and regulations, and a copy of the subpoena shall be served upon all parties of record by the party requesting the subpoena.

(C) Content. A subpoena may be issued when necessary to compel the attendance of a witness or to require the production for examination of any relevant books, records or documents whatsoever.

(D) Contests.

(1) On motion of the person to whom the subpoena is directed or a party, and for good cause shown the Commission or the hearing officer presiding in the case may quash or modify any subpoena;

(2) In the case of a subpoena duces tecum issued and served at the request of the Department, the Commission or the hearing officer presiding in the case shall upon request order the Department to pay the reasonable expense of producing or providing any item specified in the subpoena.

(E) Enforcement.

(1) When anyone fails or refuses to obey a subpoena, the Commission, through a panel of 3 members, shall authorize Commission staff to prepare and file a petition for enforcement in the circuit court of the county in which the person to whom the subpoena was directed resides or has his or her principal place of business.

(2) Not less than five days before the petition is filed in the appropriate court, it shall be served on the person along with a notice of the time and place the petition is to

be presented.

(3) Following a hearing on the petition, the circuit courts shall have jurisdiction to enforce subpoenas issued pursuant to this Section.

(F) Witnesses.

(1) If any witness whose testimony is required for hearing resides outside the state, or through illness or any other good cause as determined by the hearing officer is unable to testify at the hearing, his or her testimony or deposition may be taken, within or without the State, in the same manner as is provided for in the taking of depositions in civil cases in circuit courts.

(2) Witnesses subject to subpoena shall be paid the same fees and mileage as are paid witnesses in the circuit courts of this state, and witnesses whose depositions are taken or the person taking them shall be entitled to the same fees as are paid for like services in the circuit courts of this State.

(G) Service of Process.

(1) Except as otherwise provided in this Act, complaints, orders and other process and proper papers shall be served in accordance with such rules and regulations as the Commission may from time to time prescribe. The verified return of the individual making service in accordance with this Section and setting forth the manner of such service shall constitute proof of service.

(2) For the purposes of this Act, any documents served upon any officer of a labor organization shall be sufficient to acquire jurisdiction against such labor organization, or labor union, or voluntary unincorporated union association, and all of its officers, members and representatives. (Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/8-105) (from Ch. 68, par. 8-105)

Sec. 8-105. Settlement.

(A) Approval.

(1) When a proposed settlement is submitted by the Department, the Commission, through a panel of 3 members, shall determine whether to approve its terms and conditions.

(2) A settlement of any complaint and its underlying charge or charges may be effectuated at any time upon agreement of the parties, with or without the Commission's approval, and shall act as a full and final resolution of the matter. If the parties desire that the Commission retain jurisdiction over the matter for purposes of enforcing the terms of the settlement, the terms shall be reduced to writing, signed by the parties, and submitted to the Commission for approval. The Commission, through a panel of 3 members, shall determine whether to approve the settlement.

(3) Approval of the settlement shall be accomplished by an order, served on the parties and the Department, in accord with the written terms of the settlement.

(B) Violation. When the Department files notice of a settlement order violation, the Commission, through a panel of three members, may either order the Department to seek enforcement of the settlement order pursuant to paragraph (B) of Section 8-111 or remand for any type of hearing as it may deem necessary pursuant to paragraph (D) of Section 8A-103.

(C) Dismissal for Refusal to Accept Settlement Offer. The Commission shall dismiss a complaint and the underlying charge or charges of the complaint if the Commission is satisfied that: 1. The respondent has eliminated the effects of the civil rights violation charged and taken steps to prevent repetition of the violation; or 2. The respondent offers and the complainant declines to accept the terms of settlement that the Commission determines are sufficient to eliminate the effect of the civil rights violation charged and to prevent repetition of the violation; or In determining whether the respondent has

eliminated the effects of the civil rights violation charged, or has offered terms of settlement sufficient to eliminate same, the Commission shall consider the extent to which the respondent has either fully provided, or reasonably offered by way of terms of settlement, as the case may be, the relevant relief available to the complainant under Section 8A-104 of this Act. At any time after the service of a complaint pursuant to Section 8A-102 of this Act, and prior to service of a decision prepared pursuant to Section 8A-102(I), a respondent may move for a recommended order dismissing a complaint and the underlying charge or charges for complainant's refusal to accept terms of settlement that are sufficient to eliminate the effects of the civil rights violation charged in the complaint and to eliminate repetition of the violation. Respondent's motion and complainant's reply, if any, shall comply with the requirements for summary decision set forth in Section 8-106.1 of this Act.

(D) This amendatory Act of 1996 applies to causes of action filed on or after January 1, 1996.

(Source: P.A. 89-370, eff. 8-18-95; 89-520, eff. 7-18-96.)

(775 ILCS 5/8-106.1) (from Ch. 68, par. 8-106.1)

Sec. 8-106.1. **Summary Decision.**

(1) At any time after the service of a complaint and prior to service of a decision pursuant to Section 8-106(I), complainant or respondent may move with or without supporting affidavits for a summary order in the moving party's favor as to all or any part of the relief sought. A hearing officer may not preclude the filing of said motion except within the 60-day period prior to hearing on the merits of the complaint.

(2) Procedure. The non-moving party may file counter-affidavits prior to the time of the ruling on the motion. The hearing officer shall decide the motion without delay and shall grant it if the pleadings and affidavits, if

any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law. The term "without delay" shall be defined by rule promulgated by the Commission. An interim summary recommended order, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the relief to be awarded.

(3) Affidavits or Motions Made in Bad Faith. If it appears to the satisfaction of the hearing officer at any time that any affidavit or motion presented pursuant to this Section is presented in bad faith or solely for the purpose of delay, the hearing officer may recommend that the party employing the use of affidavits for dilatory purposes shall pay to the other party the amount of reasonable expenses incurred as a result of the filing of the affidavit or motion, including reasonable attorney's fees. (Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/8-109) (from Ch. 68, par. 8-109)

Sec. 8-109. **Specific Penalties;** Public Contracts; Licensees; Public Officials. In addition to the penalties and forms of relief set forth in Section 8-108, a hearing officer may recommend and the Commission or any three member panel thereof may:

(A) Public Contracts. In the case of a respondent who commits a civil rights violation while holding a public contract, where the practice was authorized, requested, commanded, performed, or knowingly permitted by the board of directors of the respondent or by an officer or executive agent acting within the scope of his employment, order:

(1) termination of the contract;

(2) debarment of the respondent from participating in public contracts for a period not to exceed three years;

(3) imposition of a penalty to be paid to the State

Treasurer not to exceed any profit acquired as a direct result of a civil rights violation; or

(4) any combination of these penalties.

(B) Licensees. In the case of a respondent, operating by virtue of a license issued by the State, a political subdivision, or any agency thereof, who commits a civil rights violation, recommend to the appropriate licensing authority that the respondent's license be suspended or revoked.

(C) Public Officials. In the case of a respondent who is a public official who violates paragraph (C) of Section 5-102, recommend to the department or agency in which the official is employed that such disciplinary or discharge proceedings as the Commission deems appropriate be employed.

(Source: P.A. 81-1267.)

(775 ILCS 5/8-110) (from Ch. 68, par. 8-110)

Sec. 8-110. **Publication of Opinions**. Decisions of the Commission or panels thereof on complaints shall be published within 120 calendar days of the completion of service of the written decision on the parties to assure a consistent source of precedent. This amendatory Act of 1995 applies to causes of action filed on or after January 1, 1996.

(Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/8-111) (from Ch. 68, par. 8-111)

Sec. 8-111. Court Proceedings.

(A) (1) Judicial Review. Any complainant or respondent may apply for and obtain judicial review of any final order entered under this Act by filing a petition for review in the Appellate Court within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision. If a 3-member panel or the full Commission finds that an interlocutory order involves a

question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, any party may petition the Appellate Court for permission to appeal the order. The procedure for obtaining the required Commission findings and the permission of the Appellate Court shall be governed by Supreme Court Rule 308, except the references to the "trial court" shall be understood as referring to the Commission.

(2) In any proceeding brought for judicial review, the findings of fact made at the administrative level shall be sustained unless the court determines that such findings are contrary to the manifest weight of the evidence.

(3) Venue. Proceedings for judicial review shall be commenced in the appellate court for the district wherein the civil rights violation was allegedly committed.

(B) Judicial Enforcement.

(1) When the Commission, at the instance of the Department or an aggrieved party, concludes that any person has violated a valid order of the Commission issued pursuant to this Act, and the violation and its effects are not promptly corrected, the Commission, through a panel of 3 members, shall order the Department to commence an action in the name of the People of the State of Illinois by complaint, alleging the violation, attaching a copy of the order of the Commission and praying for the issuance of an order directing such person, his or her or its officers, agents, servants, successors and assigns to comply with the order of the Commission.

(2) An aggrieved party may file a complaint for enforcement of a valid order of the Commission directly in Circuit Court. (3) Upon the commencement of an action filed under paragraphs (1) or (2) of subsection (B) of this Section the court shall have jurisdiction over the proceedings and power to grant or refuse, in whole or in part, the relief sought or impose such other remedy as the

court may deem proper.

(4) The court may stay an order of the Commission in accordance with the applicable Supreme Court rules, pending disposition of the proceedings.

(5) The court may punish for any violation of its order as in the case of civil contempt.

(6) Venue. Proceedings for judicial enforcement of a Commission order shall be commenced in the circuit court in the county wherein the civil rights violation which is the subject of the Commission's order was committed.

(C) Limitation. Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act.

(D) This amendatory Act of 1996 applies to causes of action filed on or after January 1, 1996.
(Source: P.A. 88-1; 89-348, eff. 1-1-96; 89-520, eff. 7-18-96.)

(775 ILCS 5/8-112) (from Ch. 68, par. 8-112)

Sec. 8-112. Public Grants; Private Gifts) The commission is authorized to accept public grants and private gifts and bequests so long as the conditions of the grant, gift, or bequest are not inconsistent with the purposes of this Act. (Source: P.A. 81-1216.)

(775 ILCS 5/8-113) (from Ch. 68, par. 8-113)

Sec. 8-113. **Immigration**. The Human Rights Commission and the Department of Human Rights are authorized to receive and collect information concerning employment discrimination in relation to persons affected by the federal Immigration Reform and Control Act of 1986, and the Human Rights Commission and the Department of Human Rights are authorized to cooperate with the United States General Accounting Office in providing such information as may be necessary or

appropriate for the preparation of the report of the Comptroller General of the United States on discrimination and the implementation of employer sanctions pursuant to that Act. The Human Rights Commission and Department of Human Rights shall coordinate their activities under this Section, and report to the Governor or his designee. (Source: P.A. 85-139.)

CONTENTS OF THE ACT

Article 8A. Illinois Human Rights Commission; Procedures Under Articles 2, 4, 5, 5A and 6

(775 ILCS 5/8A-101) (from Ch. 68, par. 8A-101)

Sec. 8A-101. This Article shall apply solely to Articles 2, 4, 5, 5A and 6.
(Source: P.A. 86-910.)

(775 ILCS 5/8A-102) (from Ch. 68, par. 8A-102)

Sec. 8A-102. **Hearing on Complaint.**

(A) Services. Within five days after a complaint is filed by the Department, or the aggrieved party, as the case may be, the Commission shall cause it to be served on the respondent together with a notice of hearing before a hearing officer of the Commission at a place therein fixed.

(B) Time and Location of Hearing. An initial hearing date shall be scheduled for not less than thirty nor more than ninety days after service of the complaint at a place that is within one hundred miles of the place at which the civil rights violation is alleged to have occurred. The hearing officer may, for good cause shown, extend the date of the hearing.

(C) Amendment.

(1) A complaint may be amended under oath by leave of the presiding hearing officer, for good cause shown, upon timely written motion and reasonable notice to all

interested parties at any time prior to the issuance of a recommended order pursuant to Section 8A-102(I) or 8B-102(J). The amended complaint shall be served upon all parties of record and the Department of Human Rights by the complainant, or by the Department if it prepared and filed the amended complaint, within 7 days of the date of the order permitting its filing or such additional time as the hearing officer may order. Amendments to the complaint may encompass any unlawful discrimination which is like or reasonably related to the charge and growing out of the allegations in such charge, including, but not limited to, allegations of retaliation.

(2) A motion that the complaint be amended to conform to the evidence, made prior to the close of the public hearing, may be addressed orally on the record to the hearing officer, and shall be granted for good and sufficient cause.

(D) Answer.

(1) The respondent shall file an answer under oath or affirmation to the original or amended complaint within 30 days of the date of service thereof, but the hearing officer may, for good cause shown, grant further time for the filing of an answer.

(2) When the respondent files a motion to dismiss the complaint within 30 days and the motion is denied by the hearing officer, the time for filing the answer shall be within 15 days of the date of denial of the motion.

(3) Any allegation in the complaint which is not denied or admitted in the answer is deemed admitted unless the respondent states in the answer that he is without sufficient knowledge or information to form a belief with respect to such allegation.

(4) The failure to file an answer is deemed to constitute an admission of the allegations contained in the complaint.

(5) The respondent has the right to amend his answer,

upon leave of the hearing officer, for good cause shown.

(E) Proceedings In Forma Pauperis.

(1) If the hearing officer is satisfied that the complainant or respondent is a poor person, and unable to prosecute or defend the complaint and pay the costs and expenses thereof, the hearing officer may permit the party to commence and prosecute or defend the action as a poor person. Such party shall have all the necessary subpoenas, appearances, and proceedings without prepayment of witness fees or charges. Witnesses shall attend as in other cases under this Act and the same remedies shall be available for failure or refusal to obey the subpoena as are provided for in Section 8-104 of this Act. (2) A person desiring to proceed without payment of fees or charges shall file with the hearing officer an affidavit stating that he is a poor person and unable to pay costs, and that the action is meritorious.

(F) Discovery. The procedure for obtaining discovery of information from parties and witnesses shall be specified by the Commission in rules. If no rule has been promulgated by the Commission on a particular type of discovery, the Code of Civil Procedure may be considered persuasive authority. The types of discovery shall be the same as in civil cases in the circuit courts of this State, provided, however, that a party may take discovery depositions only upon leave of the hearing officer and for good cause shown.

(G) Hearing.

(1) Both the complainant and the respondent may appear at the hearing and examine and cross-examine witnesses.

(2) The testimony taken at the hearing shall be under oath or affirmation and a transcript shall be made and filed in the office of the Commission.

(3) The testimony taken at the hearing is subject to the same rules of evidence that apply in courts of this State in civil cases.

(H) Compelling Appearance of Parties at Hearing. The appearance at the hearing of a party or a person who at the time of the hearing is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require the production at the hearing of documents or tangible things. If the party or person is a nonresident of the county, the hearing officer may order any terms and conditions in connection with his appearance at the hearing that are just, including payment of his reasonable expenses. Upon a failure to comply with the notice, the hearing officer may enter any order that is just.

(I) Decision.

(1) When all the testimony has been taken, the hearing officer shall determine whether the respondent has engaged in or is engaging in the civil rights violation with respect to the person aggrieved as charged in the complaint. A determination sustaining a complaint shall be based upon a preponderance of the evidence.

(2) The hearing officer shall make findings of fact in writing and, if the finding is against the respondent, shall issue and cause to be served on the parties and the Department a recommended order for appropriate relief as provided by this Act.

(3) If, upon all the evidence, the hearing officer finds that a respondent has not engaged in the discriminatory practice charged in the complaint or that a preponderance of the evidence does not sustain the complaint, he shall state his findings of fact and shall issue and cause to be served on the parties and the Department a recommended order dismissing the complaint. (4) The findings and recommended order of the hearing officer shall be filed with the Commission. The findings and recommended order need not be authored by the hearing officer who presides at the public hearing if: (a) all parties to a complaint agree to have the decision written by a hearing officer who did not preside

at the public hearing; (b) the presiding hearing officer transmits his or her impression of witness credibility to the hearing officer who authors the findings and recommended order; and (c) there are no questions of witness credibility presented by the record as found by the presiding hearing officer.

(5) A recommended order dismissing a complaint may include an award of reasonable attorneys fees in favor of the respondent against the complainant or the complainant's attorney, or both, if the hearing officer concludes that the complaint was frivolous, unreasonable or groundless or that the complainant continued to litigate after it became clearly so.

(6) The hearing officer may issue a recommended order of dismissal with prejudice or a recommended order of default as a sanction for the failure of a party to prosecute his or her case, file a required pleading, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous order of the hearing officer. (Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/8A-102.5)

Sec. 8A-102.5. **Alternative hearing procedure.**

(A) All parties shall be given the right to proceed under this Section.

(B) If all parties to a complaint stipulate to proceedings under this Section, the complaint shall be resolved in the following manner:

(1) The parties shall select a hearing officer by mutual agreement from a pool of hearing officers determined by the Commission.

(2) The parties shall have a limited right to discovery. The methods of discovery available to the parties shall be specified in rules promulgated by the Commission.

(3) If a dispositive motion is made with respect to a case, the hearing officer mutually agreed upon shall have

the authority to issue a final order disposing of the complaint based upon the motion.

(4) If the case proceeds to public hearing, the hearing officer mutually agreed upon shall have the authority to issue a final order disposing of the complaint based upon the pleadings and the evidence presented. The final order shall be in sufficient detail to apprise the parties as to the basis for the decisions, but need not contain detailed findings of fact and conclusions of law.

(C) There is no right of appeal of orders issued under this Section. By stipulating to resolution of the complaint under this Section, the parties waive all right of appeal except for orders procured by fraud or duress.

(D) Final orders issued under this Section are enforceable in the same manner as orders issued by the Commission.

(Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/8A-103) (from Ch. 68, par. 8A-103)

Sec. 8A-103. **Review by Commission.**

(A) Exceptions. Within 30 days of the receipt of service of the hearing officer's recommended order, a party may file with the Commission any written exceptions to any part of the order. Exceptions shall be supported by argument and served on all parties at the time they are filed. If no exceptions are filed, the recommended order shall become the order of the Commission without further review.

(B) Response. Within 21 days of the receipt of service of exceptions, a party may file with the Commission any response to the exceptions. Responses shall be supported by argument and served on all parties at the time they are filed.

(C) Oral Argument. A party may request oral argument at the time of filing exceptions or a response to exceptions. When any party requests oral argument in this manner, the Commission may schedule oral argument to be heard by a panel of 3 Commission members. If the panel grants oral

argument, it shall notify all parties of the time and place of argument. Any party so notified may present oral argument.

(D) Remand.

(1) The Commission, on its own motion or at the written request of any party made at the time of filing exceptions or responses, may remand a case to a hearing officer for purposes of a rehearing to reconsider evidence or hear additional evidence in the matter. The Commission shall issue and serve on all parties a written order remanding the cause and specifying the additional evidence.

(2) The hearing officer presiding at a rehearing shall set a hearing date, in accordance with subsection (B) of Section 8A-102, upon due notice to all parties.

(3) After conclusion of the rehearing, the hearing officer shall file written findings and recommendations with the Commission and serve copies at the same time on all parties in the same manner as provided in subsection (I) of Section 8A-102. The findings and recommendations shall be subject to review by the Commission as provided in this Section.

(E) Review.

(1) Following the filing of the findings and recommended order of the hearing officer and any written exceptions and responses, and any other proceedings provided for in this Section, the Commission, through a panel of 3 members, shall decide whether to accept the case for review. If the panel declines to review the recommended order, it shall become the order of the Commission. If the panel accepts the case, it shall review the record and may adopt, modify, or reverse in whole or in part the findings and recommendations of the hearing officer.

(2) When reviewing a recommended order, the Commission shall adopt the hearing officer's findings of fact if they are not contrary to the manifest weight of the evidence.

(3) If the Commission accepts a case for review, it

shall file its written order and decision in its office and serve copies on all parties together with a notification of the date when it was filed. If the Commission declines to review a recommended order or if no exceptions have been filed, it shall issue a short statement notifying the parties that the recommended order has become the order of the Commission. The statement shall be served on the parties by first class mail.

(4) A recommended order authored by a non-presiding hearing officer under subparagraph 8A-102(I)(4) of this Act shall be reviewed in the same manner as a recommended order authored by a presiding hearing officer.

(F) Rehearing.

(1) Within 30 days after service of the Commission's order or statement declining review, a party may file an application for rehearing before the full Commission. The application shall be served on all other parties. The Commission shall have discretion to order a response to the application. The filing of an application for rehearing is optional. The failure to file an application for rehearing shall not be considered a failure to exhaust administrative remedies. This amendatory Act of 1991 applies to pending proceedings as well as those filed on or after its effective date.

(2) Applications for rehearing shall be viewed with disfavor and may be granted, by vote of 6 Commission members, only upon a clear demonstration that a matter raises legal issues of significant impact or that Commission decisions are in conflict.

(3) When an application for rehearing is granted, the original order shall be nullified and oral argument before the full Commission shall be scheduled. The Commission may request the parties to file any additional written arguments it deems necessary.

(G) Modification of Order.

(1) At any time before a final order of the court in a

proceeding for judicial review under this Act, the Commission or the 3-member panel that decided the matter, upon reasonable notice, may modify or set aside in whole or in part any finding or order made by it in accordance with this Section.

(2) Any modification shall be accomplished by the filing and service of a supplemental order and decision by the Commission in the same manner as provided in this Section.

(H) Extensions of time. All motions for extensions of time with respect to matters being considered by the Commission shall be decided by the full Commission or a 3-member panel. If a motion for extension of time cannot be ruled upon before the filing deadline sought to be extended, the Chairperson of the Commission shall be authorized to extend the filing deadline to the date of the next Commission meeting at which the motion can be considered.

(Source: P.A. 89-348, eff. 1-1-96; 89-370, eff. 8-18-95; 89-626, eff. 8-9-96.)

(775 ILCS 5/8A-104) (from Ch. 68, par. 8A-104)

Sec. 8A-104. **Relief; Penalties.** Upon finding a civil rights violation, a hearing officer may recommend and the Commission or any three-member panel thereof may provide for any relief or penalty identified in this Section, separately or in combination, by entering an order directing the respondent to:

(A) Cease and Desist Order. Cease and desist from any violation of this Act.

(B) Actual Damages. Pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant.

(C) Hiring; Reinstatement; Promotion; Backpay; Fringe Benefits. Hire, reinstate or upgrade the complainant with or without back pay or provide such fringe benefits as the

complainant may have been denied.

(D) Restoration of Membership; Admission To Programs. Admit or restore the complainant to labor organization membership, to a guidance program, apprenticeship training program, on the job training program, or other occupational training or retraining program.

(E) Public Accommodations. Admit the complainant to a public accommodation.

(F) Services. Extend to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the respondent.

(G) Attorneys Fees; Costs. Pay to the complainant all or a portion of the costs of maintaining the action, including reasonable attorney fees and expert witness fees incurred in maintaining this action before the Department, the Commission and in any judicial review and judicial enforcement proceedings. Provided, however, that no award of attorney fees or costs shall be made pursuant to this amendatory Act of 1987 with respect to any charge for which the complaint before the Commission was filed prior to December 1, 1987. With respect to all charges for which complaints were filed with the Commission prior to December 1, 1987, attorney fees and costs shall be awarded pursuant to the terms of this subsection as it existed prior to revision by this amendatory Act of 1987.

(H) Compliance Report. Report as to the manner of compliance.

(I) Posting of Notices. Post notices in a conspicuous place which the Commission may publish or cause to be published setting forth requirements for compliance with this Act or other relevant information which the Commission determines necessary to explain this Act.

(J) Make Complainant Whole. Take such action as may be necessary to make the individual complainant whole,

including, but not limited to, awards of interest on the complainant's actual damages and backpay from the date of the civil rights violation. Provided, however, that no award of prejudgment interest shall be made pursuant to this amendatory Act of 1987 with respect to any charge in which the complaint before the Commission was filed prior to December 1, 1987. With respect to all charges for which complaints were filed with the Commission prior to December 1, 1987, make whole relief shall be awarded pursuant to this subsection as it existed prior to revision by this amendatory Act of 1987. There shall be no distinction made under this Section between complaints filed by the Department and those filed by the aggrieved party. (Source: P.A. 86-910.)

CONTENTS OF THE ACT

Article 8B. Procedures and Relief in Article 3 Cases Before The Human Rights Commission

(775 ILCS 5/8B-101) (from Ch. 68, par. 8B-101)

Sec. 8B-101. Applicability. The procedures and relief specified in this Article shall apply solely to complaints filed with the Human Rights Commission under Article 3. (Source: P.A. 86-910.)

(775 ILCS 5/8B-102) (from Ch. 68, par. 8B-102)

Sec. 8B-102. **Hearing on complaint.**

(A) Election of Judicial Determination. When a complaint is filed under Section 7B-102(F) a complainant, a respondent, or an aggrieved party on whose behalf the complaint was filed, may elect to have the claims asserted in that complaint decided in a civil action in a circuit court of Illinois, in which case the Illinois Code of Civil Procedure shall apply. The election must be made not later

than 20 days after the receipt by the electing person of service of the complaint by the Commission. The person making such election shall file it with the Commission and shall give notice of doing so to the Department and to all other complainants and respondents to whom the charge relates. If an election is made, the Commission shall act no further on the complaint and shall administratively close the file on the complaint. If an election is not made, the Commission shall continue proceedings on the complaint in accordance with this Act and the hearing shall be before a hearing officer.

(B) Services. Within 5 days after a complaint is filed by the Department, the Commission shall cause it to be served on the respondent and complainant together with a notice of hearing before a hearing officer of the Commission at a place therein fixed and with information as to how to make an election under subsection (A) and the effect of such an election.

(C) Time and Location of Hearing. An initial hearing date shall be scheduled for not less than 30 nor more than 90 days after service of the complaint at a place that is within 100 miles of the place at which the civil rights violation is alleged to have occurred. The hearing officer may, for good cause shown, extend the date of the hearing.

(D) Amendment.

(1) A complaint may be amended under oath by leave of the presiding hearing officer, for good cause shown, upon timely written motion and reasonable notice to all interested parties at any time prior to the issuance of a recommended order pursuant to Section 8A-102(I) or 8B-102(J). The amended complaint shall be served upon all parties of record by the Department within 7 days of the date of the order permitting its filing or such additional time as the hearing officer may order. Amendments to the complaint may encompass any unlawful discrimination which is like or reasonably related to the charge and

growing out of the allegations in such charge, including, but not limited to, allegations of retaliation.

(2) A motion that the complaint be amended to conform to the evidence, made prior to the close of the public hearing, may be addressed orally on the record to the hearing officer, and shall be granted for good and sufficient cause.

(E) Answer.

(1) The respondent shall file an answer under oath or affirmation to the original or amended complaint within 30 days of the date of service thereof, but the hearing officer may, for good cause shown, grant further time for the filing of an answer.

(2) When the respondent files a motion to dismiss the complaint within 30 days and the motion is denied by the hearing officer, the time for filing the answer shall be within 15 days of the date of denial of the motion.

(3) Any allegation in the complaint which is not denied or admitted in the answer is deemed admitted unless the respondent states in the answer that he is without sufficient knowledge or information to form a belief with respect to such allegation.

(4) The failure to file an answer is deemed to constitute an admission of the allegations contained in the complaint.

(5) The respondent has the right to amend his answer, upon leave of the hearing officer, for good cause shown.

(F) Proceedings In Forma Pauperis.

(1) If the hearing officer is satisfied that the complainant or respondent is a poor person, and unable to prosecute or defend the complaint and pay the costs and expenses thereof, the hearing officer may permit the party to commence and prosecute or defend the action as a poor person. Such party shall have all the necessary subpoenas, appearances, and proceedings without prepayment of witness fees or charges. Witnesses shall attend as in other

cases under this Act and the same remedies shall be available for failure or refusal to obey the subpoena as are provided for in Section 8-104 of this Act. (2) A person desiring to proceed without payment of fees or charges shall file with the hearing officer an affidavit stating that he is a poor person and unable to pay costs, and that the action is meritorious.

(G) Discovery. The procedures for obtaining discovery of information from parties and witnesses shall be specified by the Commission in rules. If no rule has been promulgated by the Commission on a particular type of discovery, the Code of Civil Procedure may be considered persuasive authority. The types of discovery shall be the same as in civil cases in the circuit courts of this State, provided, however, that a party may take discovery depositions only upon leave of the hearing officer and for good cause shown.

(H) Hearing.

(1) The Department and the respondent shall be parties in hearings under this Article. The Department shall seek appropriate relief for the complainant and vindication of the public interest. Any complainant may intervene as a party. All parties have the right to examine and cross examine witnesses.

(2) The testimony taken at the hearing shall be under oath or affirmation and a transcript shall be made and filed in the office of the Commission.

(3) The testimony taken at the hearing is subject to the same rules of evidence that apply in courts of this State in civil cases.

(I) Compelling Appearance of Parties at Hearing. The appearance at the hearing of a party or a person who at the time of the hearing is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require the production at the hearing of

documents or tangible things. If the party or person is a nonresident of the county, the hearing officer may order any terms and conditions in connection with his appearance at the hearing that are just, including payment of his reasonable expenses. Upon a failure to comply with the notice, the hearing officer may enter any order that is just.

(J) Decision.

(1) When all the testimony has been taken, the hearing officer shall determine whether the respondent has engaged in or is engaging in the civil rights violation with respect to the aggrieved party as charged in the complaint. A determination sustaining a complaint shall be based upon a preponderance of the evidence.

(2) The hearing officer shall make findings of fact in writing and, if the finding is against the respondent, shall issue and cause to be served on the parties and the Department a recommended order for appropriate relief as provided by this Act.

(3) If, upon all the evidence, the hearing officer finds that a respondent has not engaged in the civil rights violation charged in the complaint or that a preponderance of the evidence does not sustain the complaint, he shall state his findings of fact and shall issue and cause to be served on the parties and the Department a recommended order dismissing the complaint.

(4) The findings and recommended order of the hearing officer shall be filed with the Commission. The findings and recommended order need not be authored by the hearing officer who presides at the public hearing if:

(a) all parties to a complaint agree to have the decision written by a hearing officer who did not preside at the public hearing;

(b) the presiding hearing officer transmits his or her impression of witness credibility to the hearing officer who authors the findings and recommended order; and

(c) there are no questions of witness credibility

presented by the record as found by the presiding officer.

(5) The hearing officer may issue a recommended order of dismissal with prejudice or a recommended order of default as a sanction for the failure of a party to prosecute his or her case, file a required pleading, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous order of the hearing officer.

(K) Effect of Trial of Civil Action on Administrative Proceedings. A hearing officer shall not proceed with any administrative proceedings under this Section after the filing of a civil action by or on behalf of the aggrieved party under federal or State law seeking relief with respect to the alleged civil rights violation.

(Source: P.A. 89-370, eff. 8-18-95.)

(775 ILCS 5/8B-103) (from Ch. 68, par. 8B-103)

Sec. 8B-103. Review by Commission.

(A) Exceptions. Within 30 days of the receipt of service of the hearing officer's recommended order, a party may file with the Commission any written exceptions to any part of the order. Exceptions shall be supported by argument and served on all parties at the time they are filed. If no exceptions are filed, the recommended order shall become the order of the Commission without further review.

(B) Response. Within 21 days of the receipt of service of exceptions, a party may file with the Commission any response to the exceptions. Responses shall be supported by argument and served on all parties at the time they are filed.

(C) Oral Argument. A party may request oral argument at the time of filing exceptions or a response to exceptions. When any party requests oral argument in this manner, the Commission may schedule oral argument to be heard by a panel of 3 Commission members. If the panel grants oral argument, it shall notify all parties of the time and place of argument. Any party so notified may present oral argument.

(D) Remand.

(1) The Commission, on its own motion or at the written request of any party made at the time of filing exceptions or responses, may remand a case to a hearing officer for purposes of a rehearing to reconsider evidence or hear additional evidence in the matter. The Commission shall issue and serve on all parties a written order remanding the cause and specifying the additional evidence.

(2) The hearing officer presiding at a rehearing shall set a hearing date, in accordance with Section 8B-102(C), upon due notice to all parties.

(3) After conclusion of the rehearing, the hearing officer shall file written findings and recommendations with the Commission and serve copies at the same time on all parties in the same manner as provided in Section 8B-102(J). The findings and recommendations shall be subject to review by the Commission as provided in this Section.

(E) Review.

(1) Following the filing of the findings and recommended order of the hearing officer and any written exceptions and responses, and any other proceedings provided for in this Section, the Commission, through a panel of 3 members, may review the record and may adopt, modify, or reverse in whole or in part the findings and recommendations of the hearing officer.

(2) When reviewing a recommended order, the Commission shall adopt the hearing officer's findings of fact if they are not contrary to the manifest weight of the evidence.

(3) If the Commission accepts a case for review, it shall file its written order and decision in its office and serve copies on all parties together with a notification of the date when it was filed. If the Commission declines to review a recommended order or if no exceptions have been filed, it shall issue a short statement notifying the parties that the recommended order has become the order of the Commission. The statement shall be served on the parties

by first class mail. (3.1) A recommended order authored by a non-presiding hearing officer under subparagraph 8B-102(J)(4) shall be reviewed in the same manner as a recommended order authored by a presiding hearing officer.

(4) The Commission shall issue a final decision within one year of the date a charge is filed with the Department unless it is impracticable to do so. If the Commission is unable to issue a final decision within one year of the date the charge is filed with the Department, it shall notify all parties in writing of the reasons for not doing so.

(F) Rehearing.

(1) Within 30 days after service of the Commission's order or statement declining review, a party may file an application for rehearing before the full Commission. The application shall be served on all other parties. The Commission shall have discretion to order a response to the application. The filing of an application for rehearing is optional. The failure to file an application for rehearing shall not be considered a failure to exhaust administrative remedies. This amendatory Act of 1991 applies to pending proceedings as well as those filed on or after its effective date.

(2) Applications for rehearing shall be viewed with disfavor, and may be granted, by vote of 6 Commission members, only upon a clear demonstration that a matter raises legal issues of significant impact or that Commission decisions are in conflict.

(3) When an application for rehearing is granted, the original order shall be nullified and oral argument before the full Commission shall be scheduled. The Commission may request the parties to file any additional written arguments it deems necessary.

(G) Modification of Order.

(1) At any time before a final order of the court in a proceeding for judicial review under this Act, the Commission or the 3-member panel that decided the matter,

upon reasonable notice, may modify or set aside in whole or in part any finding or order made by it in accordance with this Section.

(2) Any modification shall be accomplished by the filing and service of a supplemental order and decision by the Commission in the same manner as provided in this Section.

(H) Extensions of time. All motions for extensions of time with respect to matters being considered by the Commission shall be decided by the full Commission or a 3-member panel. If a motion for extension of time cannot be ruled upon before the filing deadline sought to be extended, the Chairperson of the Commission shall be authorized to extend the filing deadline to the date of the next Commission meeting at which the motion can be considered.

(Source: P.A. 89-348, eff. 1-1-96; 89-370, eff. 8-18-95; 89-626, eff. 8-9-96.)

(775 ILCS 5/8B-104) (from Ch. 68, par. 8B-104)

Sec. 8B-104. **Relief; Penalties.** Upon finding a civil rights violation, a hearing officer may recommend and the Commission or any three-member panel thereof may provide for any relief or penalty identified in this Section, separately or in combination, by entering an order directing the respondent to:

(A) Cease and Desist Order. Cease and desist from any violation of this Act.

(B) Actual Damages. Pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant.

(C) Civil Penalty. Pay a civil penalty to vindicate the public interest: (i) in an amount not exceeding $10,000 if the respondent has not been adjudged to have committed any prior civil rights violation under Article 3; (ii) in an amount not exceeding $25,000 if the respondent has been

adjudged to have committed one other civil rights violation under Article 3 during the 5-year period ending on the date of the filing of this charge; and (iii) in an amount not exceeding $50,000 if the respondent has been adjudged to have committed 2 or more civil rights violations under Article 3 during the 7-year period ending on the date of the filing of this charge; except that if the acts constituting the civil rights violation that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a civil rights violation under Article 3, then the civil penalties set forth in subparagraphs (ii) and (iii) may be imposed without regard to the period of time within which any subsequent civil rights violation under Article 3 occurred.

(D) Attorney Fees; Costs. Pay to the complainant all or a portion of the costs of maintaining the action, including reasonable attorneys fees and expert witness fees incurred in maintaining this action before the Department, the Commission and in any judicial review and judicial enforcement proceedings. (E) Compliance Report. Report as to the manner of compliance.

(F) Posting of Notices. Post notices in a conspicuous place which the Commission may publish or cause to be published setting forth requirements for compliance with this Act or other relevant information which the Commission determines necessary to explain this Act.

(G) Make Complainant Whole. Take such action as may be necessary to make the individual complainant whole, including, but not limited to, awards of interest on the complainant's actual damages from the date of the civil rights violation. (Source: P.A. 86-910.)

Article 9. Savings Provisions

(775 ILCS 5/9-101) (from Ch. 68, par. 9-101)

Sec. 9-101. **Transfer; Savings.**

(A) Personnel.

(1) All personnel previously assigned to the Fair Employment Practices Commission, Department of Equal Employment Opportunity, and Human Relations Commission shall be transferred, in accordance with this Act to the Department or Commission.

(2) The rights of employees, the state, and its executive agencies under the Personnel Code, any collective bargaining agreement, or any pension, retirement or annuity plan shall not be affected by this Act.

(B) Documents; Property. All books, records, papers, documents, and property in the possession of the Fair Employment Practices Commission, Department of Equal Employment Opportunity, and Human Relations Commission shall be transferred, in accordance with this Act to the Department or Commission.

(C) Service of Documents; Response to Subpoenas. Any report, notice, paper, document or response to a subpoena which previously had to be made, given, furnished or served to or upon the Fair Employment Practices Commission, Department of Equal Employment Opportunity and Human Relations Commission shall be made, given, furnished or served, in accordance with this Act to the Department.

(D) Rules and Regulations. No rule or regulation promulgated by the Fair Employment Practices Commission, Department of Equal Employment Opportunity, or Human Relations Commission, including those now in effect and those filed pursuant to the Administrative Procedure Act, shall be abrogated by this Act. In accordance with this Act they shall be deemed rules and regulations of the Department or the Commission.

(E) Completed Acts. This Act shall not affect any act completed, ratified or confirmed or any action taken in a judicial proceeding by or any right accrued or established under the authority of the Fair Employment Practices Commission, Department of Equal Employment Opportunity, Human Relations Commission. Such actions shall be continued, in accordance with this Act, by the Department or Commission.

(F) Appropriations. Appropriations made to or for the use of the Fair Employment Practices Commission, Department of Equal Employment Opportunity, and Human Relations Commission shall be transferred, in accordance with Section 9b of "An Act in relation to State finance", approved June 10, 1919, to the Department or Commission. (Source: P.A. 81-1216.)

(775 ILCS 5/9-102) (from Ch. 68, par. 9-102)

Sec. 9-102. **Pending Matters.** (A) Charges; Complaints; Causes of Action. This Act shall not affect or abate any cause of action, charge, complaint or other matter pending before or accrued under the jurisdiction of the Fair Employment Practices Commission or the Department of Equal Employment Opportunity. Each charge, complaint, or matter shall be assumed by the Department or Commission, as provided in this Act, at the same stage, or a parallel stage, of proceeding to which it had progressed prior to the effective date of this Act. (B) Special Cases. The Human Rights Act shall not in any way affect or abate any right, claim or cause of action under the "Equal Opportunities for the Handicapped Act", approved August 23, 1971, as amended, which accrued or arose prior to July 1, 1980.
(Source: P.A. 84-1084.)

CONTENTS OF THE ACT

Article 10. Circuit Court Actions

(775 ILCS 5/10-101) (from Ch. 68, par. 10-101)

Sec. 10-101. Applicability. This Article shall apply solely to civil actions arising under Article 3 of this Act. (Source: P.A. 86-910.)

(775 ILCS 5/10-102) (from Ch. 68, par. 10-102)

Sec. 10-102. **Court Actions.**

(A) Circuit Court Actions.

(1) An aggrieved party may commence a civil action in an appropriate Circuit Court not later than 2 years after the occurrence or the termination of an alleged civil rights violation or the breach of a conciliation or settlement agreement entered into under this Act, whichever occurs last, to obtain appropriate relief with respect to the alleged civil rights violation or breach. Venue for such civil action shall be determined under Section 8-111(B)(6).

(2) The computation of such 2-year period shall not include any time during which an administrative proceeding under this Act was pending with respect to a complaint or charge under this Act based upon the alleged civil rights violation. This paragraph does not apply to actions arising from a breach of a conciliation or settlement agreement.

(3) An aggrieved party may commence a civil action under this subsection whether or not a charge has been filed under Section 7B-102 and without regard to the status of any such charge, however, if the Department or local agency has obtained a conciliation or settlement agreement with the consent of an aggrieved party, no action may be filed under this subsection by such aggrieved party with respect to the alleged civil rights violation practice which forms the basis for such complaint except for the purpose of enforcing the terms of such conciliation or settlement agreement.

(4) An aggrieved party shall not commence a civil

action under this subsection with respect to an alleged civil rights violation which forms the basis of a complaint issued by the Department if a hearing officer has commenced a hearing on the record under Article 3 of this Act with respect to such complaint.

(B) Appointment of Attorney by Court. Upon application by a person alleging a civil rights violation or a person against whom the civil rights violation is alleged, if in the opinion of the court such person is financially unable to bear the costs of such action, the court may:

(1) appoint an attorney for such person, any attorney so appointed may petition for an award of attorneys fees pursuant to subsection (C)(2) of this Section; or

(2) authorize the commencement or continuation of a civil action under subsection (A) without the payment of fees, costs, or security.

(C) Relief which may be granted.

(1) In a civil action under subsection (A) if the court finds that a civil rights violation has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and may grant as relief, as the court deems appropriate, any permanent or preliminary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such civil rights violation or ordering such affirmative action as may be appropriate.

(2) In a civil action under subsection (A), the court, in its discretion, may allow the prevailing party, other than the State of Illinois, reasonable attorneys fees and costs. The State of Illinois shall be liable for such fees and costs to the same extent as a private person.

(D) Intervention By The Department. The Attorney General of Illinois may intervene on behalf of the Department if the Department certifies that the case is of general public importance. Upon such intervention the court may award such relief as is authorized to be granted to a

plaintiff in a civil action under Section 10-102(C).
(Source: P.A. 86-910.)

(775 ILCS 5/10-103) (from Ch. 68, par. 10-103)

Sec. 10-103. **Circuit Court Actions** Pursuant To Election.

(A) If an election is made under Section 8B-102, the Department shall authorize and not later than 30 days after the election is made the Attorney General shall commence and maintain a civil action on behalf of the aggrieved party in a circuit court of Illinois seeking relief under this Section. Venue for such civil action shall be determined under Section 8-111(B)(6).

(B) Any aggrieved party with respect to the issues to be determined in a civil action under this Section may intervene as of right in that civil action.

(C) In a civil action under this Section, if the court finds that a civil rights violation has occurred or is about to occur the court may grant as relief any relief which a court could grant with respect to such civil rights violation in a civil action under Section 10-102. Any relief so granted that would accrue to an aggrieved party in a civil action commenced by that aggrieved party under Section 10-102 shall also accrue to that aggrieved party in a civil action under this Section. If monetary relief is sought for the benefit of an aggrieved party who does not intervene in the civil action, the court shall not award such relief if that aggrieved party has not complied with discovery orders entered by the court.
(Source: P.A. 86-910.)

APPENDIX E

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
CHAMPAIGN COUNTY, STATE OF ILLINOIS**

LONNELL BREWER	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**CASE NO.: 02 L 128**
	)	
	)	
BOARD OF TRUSTEES	)	
OF UNIVERSITY OF	)	
ILLINOIS	)	**FILED**
	)	**Sixth Judicial Circuit**
	)	**AUG 15 2002**
AND	)	**Linda S. Frank**
	)	**Clerk of the Circuit**
Court		
KERRIN THOMPSON,	)	**Champaign County,**
L.DENISE HENDRICKS,	)	**Illinois**
WALLACE HENDRICKS,	)	
PETER FEUILLE,	)	
In their Official and	)	
Individual Capacities	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS' SECTION 2-619(a)(1)MOTION TO DISMISS

COMES NOW, plaintiff, Lonnell Brewer, by and through his attorney, Joanna C. Fryer, for his Response to

Defendants' 2-619(a) Motion to Dismiss, states to the Court as follows:

I. INTRODUCTION

Plaintiff's Complaint against defendants consists of five (5) counts. Count I asserts a race discrimination in employment claim under Title VII against all defendants. Count II alleges an Americans with Disabilities Act ("ADA") failure to accommodate claim against The Board of Trustees and defendants Thompson and Hendricks. Count III alleges §1983 claims against the individual defendants in their individual capacities for equal protection violations and violations of Title VI and the ADA. Count IV asserts a Title VI claim against all defendants for race discrimination. Count V alleges retaliation by all defendants for plaintiff's complaints concerning the alleged acts of discrimination.

In their Section 619(a)(1) Motion to Dismiss, defendants argue that the Eleventh Amendment bars

plaintiff's ADA claim, that there is no individual liability under Title VII, Title VI or the ADA, and that the Illinois Human Rights Act preempts the circuit court of original jurisdiction for all of plaintiff's claims. Each of these arguments is addressed in turn below.

II. ARGUMENT

A. The Eleventh Amendment Does Not Bar Plaintiff's ADA Claims Brought in State Court.

Defendants' argument that the Eleventh Amendment bars plaintiff's ADA claim against the Board of Trustees misapplies applicable law. Defendants are correct in stating that the Board of Trustees is an arm of the State of Illinois, and, therefore, entitled to sovereign immunity under some circumstances. In *Board of Trustees of the University of Alabama v. Garrett,* 531 U.S. 356, 374 (2001), relied upon by defendants, the United States Supreme Court held that Eleventh Amendment immunity bars ADA suits by private

individuals against *non-consenting* States *brought in federal court. Id.* at 364.

Relying upon *Alden v. Maine*, 527 U.S. 706, 119 S.Ct. 2240, 2269 (1999), Defendants argue that the Eleventh Amendment bars ADA claims brought by individuals in state courts as well. *Alden*, however, merely stands for the proposition that Congress cannot subject a state to suit in state court *without its consent. Id.* Citing *Alden,* the Seventh Circuit recently held:

> . . . although states may implement a blanket rule of sovereign immunity, Illinois has not done this. *Having opened its courts to claims based on state law, including its own prohibition of disability discrimination by units of state government, see 775 ILCS 5/1-102, 5/2-101(B)(1)(c)*, Illinois may not exclude claims based on federal law.

Erickson v. Board of Governors of State Colleges & Universities for Northeastern Illinois University, 207 F.3d 945, 952 (7th Cir. 2000) (emphasis added). Recently, in *Cooper v. Illinois State University*, 2002 WL 1752202, *4 (Ill. App. 4 Dist., July 11, 2002) the Appellate Court of

Illinois for the Fourth District explicitly conceded that the Seventh Circuit was correct in concluding that Illinois has consented to defend itself against employment discrimination claims.

Accordingly, as Illinois has consented to suit, the Eleventh Amendment does not bar plaintiff's ADA claim.

B. There Is Individual Liability Under 42 U.S.C. §1983 for Constitutional and Statutory Violations by State Actors.

As a threshold matter, the arguments set forth in Subsection B of defendants' Memorandum are not properly before this Court. Although defendants designate their Motion as one brought pursuant to Section 2-619(a)(1), the arguments contained in Subsection B are not jurisdictional in nature. Rather, they are akin to arguments that plaintiff has failed to state a cause of action in certain respects against the individual defendants. Motions to dismiss for failure to state a cause of action are not properly brought under Section 2-619. *Universal Underwriters Insurance*

Company v. Manley Ford, Inc., 215 Ill.App.3d 396, 399 (4th Dist. 1991).

Assuming, only for the sake of argument, that the Court considers Subsection B of defendants' Motion, plaintiff responds as follows: It is unclear from defendants' argument which counts or what paragraphs defendants seek to dismiss in Subsection B of their argument. Defendants instead argue generally that claims brought against the individual defendants in their individual capacities for violations of Title VII, Title VI and the ADA must be dismissed because there is no individual liability under these statutes. To the extent that plaintiff's complaint alleges individual liability under the statutes themselves in Counts I, II and IV, plaintiff concedes that defendants are correct, and hereby moves for leave to amend the Complaint such that *these counts* do not purport to name individual defendants in their individual capacities.

Defendants' argument is, however, without merit to the extent that defendants seeks to dismiss plaintiff's claims pursuant to 42 U.S.C. § 1983. (Count III).[2] A claim brought under § 1983 "requires proof that the defendants were acting under color of state law and that the defendants' conduct violated the plaintiff's rights, privileges, or immunities ***secured by the Constitution or laws of the United States.***" *Lanigan v. Vill. Of E. Hazel Crest, Ill.* 110, F3.d 467, 471 (7th Cir. 1997) (citations omitted)(emphasis added). Plaintiff's Complaint contains allegations that the individually named defendants were acting under color of state law (Complaint ¶¶14, 46) and that these defendants violated plaintiff's constitutional right to equal protection and rights under the ADA and Title VI (Complaint ¶¶ 47-48). Thus, plaintiff has sufficiently pled

---

[2] Defendants' argument in Subsection B does not seek dismissal of Count V on this basis. Accordingly, plaintiff will not address this issue. To the extent that Count V is specifically addressed, or any other new arguments made, in defendants' Reply, plaintiff requests leave to address these issue in a Sur-reply

that he was deprived of federal rights by the individually named defendants -- persons acting under color of state law.

Rights created by federal statute are presumptively enforceable under § 1983. *Gonzaga University v. Doe*, 122 S. Ct. 2268, 2270 (2002). Statutes such as Title VII and the ADA do not pre-empt § 1983 claims. For example, in *Trigg v. Fort Wayne Community Schools*, 766 F.2d 299, 302 (7th Cir. 1985) the Seventh Circuit stated:

> We conclude the Fourteenth Amendment and Title VII have granted public sector employees independent rights to be free of employment discrimination. A plaintiff may sue her state government employer for violations of the Fourteenth Amendment through § 1983 and escape Title VII's comprehensive remedial scheme, even if the same facts would suggest a violation of Title VII.

Id. See also, Ratliff v. City of Milwaukee, 795 F.2d 612 (7th Cir. 1986)(holding that a plaintiff may bring both a Title VII and a § 1983 claim alleging violations of the Equal Protection Clause of the

Fourteenth Amendment, even though the events that gave rise to both causes of action were the same)

Consistent with this precedent, the Northern District of Illinois very recently held that denial of summary judgment was proper on a plaintiff's § 1983 equal protection claim brought against a municipality supervisor in his individual capacity although the § 1983 claim was premised on the same allegations of gender and pregnancy discrimination that formed the basis of plaintiff's Title VII claims. *King v. Village of Gilberts*, 2002 WL 1559629 (N.D. Ill.)(Slip Copy).

As to plaintiff's § 1983 claim brought under the ADA, a plaintiff who brings a claim alleging violations of the ADA against a government entity may also bring a claim alleging violations of the Equal Protection Clause under § 1983 against a supervisor individually, even if same facts and

circumstances form the basis for both claims. *Baumgardner v. County of Cook*, 108 F. Supp.2d 1041, 1043-50 (N.D. Ill. 2000).

With regard to plaintiff's Title VI claim, plaintiff's rights under this statute are presumptively enforceable under § 1983. *Gonzaga University,* 122 S. Ct. at 2270-75 (2002). The same principles applied in the above-referenced cases to permit individual capacity equal protection claims under § 1983 premised on violations of the ADA and Title VII are applicable in the context of Title VI as well. Defendants have cited no authority that indicates a contrary result.

Accordingly, to the extent that defendants have moved to dismiss Count III of plaintiff's complaint in Subsection B of their argument, defendants' Motion should be denied.

C. The Illinois Human Rights Act Does Not Preempt the Circuit Court of Original Jurisdiction for Plaintiff's Claims.

The Illinois Human Rights Act ("the Act") cannot preempt the Circuit Court of Original Jurisdiction of any of plaintiff's claims. Such "preemption" contradicts clear federal authority and violates the Supremacy Clause, U.S. Const. Art. VI, § 2. Moreover, assuming, only for the sake of argument, that the Act preempts plaintiff's employment discrimination claims against the Board of Trustees, plaintiff's remaining claims concerning race discrimination and retaliation with respect to plaintiff's educational status, plaintiff's Title VI claim and the claims against the individual defendants, are not preempted by the Act under *Geise v. Phoenix Company of Chicago, Inc.*, 159 Ill.2d 507 (1994) and other applicable authorities.

1. The Act Cannot Preempt the Circuit Court of Original Jurisdiction of Any of Plaintiff's Claims.

Defendants argue that Illinois authority dictates the conclusion that all of plaintiff's federal claims are preempted by § 8-111(C) of the Act, which states that "[e]xcept as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in [the] Act." Defendants rely on *Mein v. Masonite Corp.*, 109 Ill.2d 1 (1985), *Faulkner-King v. Wicks*, 226 Ill.App.3d 962, 966-968 (4th Dist. 1992) and *Teverbaugh by Duncan v. Moore*, 311 Ill.App.3d 1 (1st Dist. 2000) in support of their argument.

Mein did not address the issue of whether *federal* discrimination claims could be brought in state court. Moreover, the holding in *Mein* was directly addressed by the Seventh Circuit in *Donnelly v. Yellow Freight System, Inc.* 874 F.2d 402, --- (7th Cir. 1989), *Aff'd,* 110 S.Ct. 1566 (1990). In *Donnelly*, defendant argued that, pursuant to *Mein*, Illinois courts do not provide a forum for Title VII

litigation and therefore jurisdiction lies exclusively with the federal courts. *Id.* at 409. The Seventh Circuit explicitly rejected this argument stating:

> Even if the *Mein* court did, in fact, intend to exclude Title VII claims from the Illinois courts, **neither the Illinois courts nor legislature have the power to close state court doors to federal causes of action**. When presented with a federal claim over which concurrent jurisdiction exists, state courts are under a "duty to exercise (jurisdiction)" over the federal claim.
>
> . . . .
>
> Once Congress has vested jurisdiction over a federal claim in the state courts, the state courts, including the courts of Illinois, are under a constitutional obligation to exercise jurisdiction.

Id. (citations omitted). To "close state doors" to federal causes of action as the above-referenced state authorities purport to do violates the Supremacy Clause, U.S. Const. Art. VI, § 2. *Howlett v. Rose*, 496 U.S. 356, 110 S.Ct. 2430 (1990) (states refusal to exercise jurisdiction over §

1983 claim violated Supremacy Clause). *See also Testa v. Katt*, 330 U.S. 386, 67 S.Ct. 810 (1947).[3]

The propriety – indeed the necessity --of bringing an employment discrimination action under the ADA in Illinois state court was recently addressed by the Seventh Circuit in *Erickson v. Board of Governors of State Colleges & Universities for Northern Illinois University*, 207 F.3d 945, 952 (7th Cir. 2000). In concluding that the plaintiff could not bring an ADA claim against the state *in federal court*, the court cautioned:

> But Northeastern Illinois University must understand the limits of this holding. The ADA is valid legislation, which both private and public actors must follow. Even if the Supreme Court should overrule Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985), and return to the view of National League of Cities v. Usery, 426 U.S. 833, 852, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976),

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[3] Plaintiff acknowledges that Faulkner-King, 226 Ill. App.3d at 970, rejects the holding in Donnelly as well as the Supremacy Clause argument. Plaintiff respectfully argues, however, that the court's analysis of federal law is incorrect and unconstitutional for the reasons stated herein.

that laws resting only on the Commerce Clause cannot "directly displace the States' freedom to structure integral operations in areas of traditional governmental functions," ***the University still would be bound by the ADA***, for running a university is no more a core governmental function than is running a railroad. See United Transportation Union v. Long Island R.R., 455 U.S. 678, 102 S.Ct. 1349, 71 L.Ed.2d 547 (1982). Like most railroads, most universities in the United States are private.

All our holding means is that private litigation to enforce the ADA may not proceed in federal court. ***Erickson may repair to Illinois court***--for although states may implement a blanket rule of sovereign immunity, see Alden v. Maine, 527 U.S. 706, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999), Illinois has not done this. Having opened its courts to claims based on state law, including its own prohibition of disability discrimination by units of state government, see 775 ILCS 5/1-102, 5/2-101(B)(1)(c), ***Illinois may not exclude claims based on federal law.*** Howlett v. Rose, 496 U.S. 356, 367-75, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990); FERC v. Mississippi, 456 U.S. 742, 759-69, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982); Testa v. Katt, 330 U.S. 386, 67 S.Ct. 810, 91 L.Ed. 967(1947). Moreover, the United States may enforce the ADA against the University and other state actors through federal litigation. [Citation.] But Erickson has not enlisted the United

> States as her champion * * * ***so this suit belongs in state court.***" (Emphasis added)

Id. at 952.

Plaintiff acknowledges that the Appellate Court of Illinois for the Fourth District very recently concluded that *Erickson* was not controlling in resolving the state court jurisdictional issues. *Cooper*, 2002 WL 1752202, *4. Plaintiff respectfully suggests that the appellate court's analysis was incorrect. First, the court in *Cooper* called the Erickson language "vague" and "misleading." There is, however, nothing misleading about the statement that "Illinois may not exclude claims based on federal law." *Erickson* at 952.

Moreover, the *Cooper* court explicitly acknowledged that it is bound to follow federal law as to issues concerning the United States Constitution.[4] The Supremacy Clause analysis is, obviously, an issue of federal law and, as such, the Illinois courts cannot ignore federal, and in particular,

U.S. Supreme Court authority, on the subject including that referenced herein.

For the reasons set forth herein, the Act cannot preempt this Court of jurisdiction for any of plaintiff's claims. To the extent that the Act requires such a result, it is unconstitutional.

2. Under Illinois Law, the Act Does Not Deprive This Court of Jurisdiction Over Plaintiff's Claims Relating to His Educational Status or Plaintiff's Title VI Claim.

Assuming, only for the sake of argument, that the Court rejects plaintiff's argument set forth in Subsection 1, plaintiff's claims relating to his educational status, and in particular, his Title VI claim, are not preempted by the Act under Illinois law. The test for determining whether a claim is subject to preemption was clarified by the Illinois Supreme Court in *Geise v. Phoenix Co.* The pivotal question is whether the claim is "inextricably linked" to a

---

[4] There were no constitutional issues *per se* raised in *Cooper*.

civil rights violation under the Act. *Geise*, 159 Ill.2d at 516-17. The Act has no provisions for redress of civil rights violations concerning educational status in higher education institutions. In addition, the facts relating to the educational civil rights violations as alleged in the Complaint, although somewhat related to plaintiff's employment discrimination claims, are not "inextricably linked" to his employment discrimination claims.

Accordingly, the Court has jurisdiction over plaintiff's claims relating to his educational status and, in particular, his Title VI claim.

A. The Court of Claims Does Not Have Exclusive Jurisdiction Over Plaintiff's Constitutional Claims, § 1983 Claims, or Title VI Claims.

Defendants argue in a passing footnote that any claims that survive defendant's Motion to Dismiss must be brought in the Court of Claims. They cite only *Faulkner-King*, 226 Ill.App.3d at 971-74 in support of this argument. In fact, the Court of Claims does not have jurisdiction over

any of plaintiff's constitutional claims or claims under § 1983 or Title VI.

The relevant section of the Court of Claims Act provides that the Court of Claims has exclusive jurisdiction with respect to:

> (d) All claims against the State for damages in cases sounding in tort, ***if a like cause of action would lie against a private person or corporation*** in a civil suit, and all like claims sounding in tort against . . . the Board of Trustees of the University of Illinois. . .

705 ILCS § 505/8 (d)(emphasis added).

Neither a private person nor corporation is not subject to liability for Constitutional violations, § 1983 violations, or violations of Title VI. Thus, the Court of Claims does not have jurisdiction over these claims. To hold otherwise would render the above-cited language superfluous, which is contrary to general principals of statutory construction.

In addition, as to plaintiff's claims against the individual defendants, "suits against the employee are not suits against the state; and a suit seeking damages for misconduct (in particular, for a violation of the Constitution) usually is a personal capacity suit." *Nelson v. Murphy,* 44 F.3d 497, (7th Cir.1995). The Court of Claims "does not have exclusive jurisdiction where the plaintiff claims that the state employee acted in violation of statutory or constitutional law, or in excess of his authority." *Id., citing Healy v. Vaupel,* (Ill.1990). *See also Wozniak v. Conroy*, 288 Ill. App. 3d. 129, 134 (4th Dist. 1997)("Whenever a state employee performs illegally, unconstitutionally, or without authority, a suit may still be maintained against the employee in his individual capacity and does not constitute an action against the State of Illinois.")

Accordingly, the Court of Claims does not have jurisdiction over the above-referenced claims. However, to

the extent that the Court finds that the Court of Claims does have exclusive jurisdiction over any or all of plaintiff's claims, plaintiff respectfully requests that the Court transfer such claims to the Court of Claims pursuant to Section 2-619(a)(1), rather than dismiss them.

WHEREFORE, plaintiff respectfully requests that this Court deny defendants' Section 2-619(a)(1) Motion to Dismiss in its entirety, and prays for such other and further relief as this Court deems just and proper.

Respectfully Submitted:

JOANNA C. FRYER

By _____ /s/

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APPENDIX F

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
96657 SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

October 7, 2003

Ms. Joanna C. Fryer
Attorney at law
5555 N. Sheridan Rd., Suite 241
Chicago, IL 60640

No. 96657 – Lonnell Brewer, petitioner, v. the Board of Trustees of the University of Illinois et al., Etc., respondents. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for appeal as a matter of right or leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 29, 2003.

(3)

No. 03-985

Supreme Court, U.S.
FILED
MAR 12 2004
OFFICE OF THE CLERK

In The

Supreme Court of the United States

LONNELL BREWER,

Petitioner,

v.

BOARD OF TRUSTEES OF UNIVERSITY OF ILLINOIS, and KERRIN THOMPSON, L. DENISE HENDRICKS, WALLACE HENDRICKS, and PETER FEUILLE in their Official and Individual Capacities,

Respondents.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois Fourth Judicial District

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. Whether Illinois courts discriminate against federal causes of action.

2. Whether the State of Illinois had waived its Eleventh Amendment immunity and had consented to being sued under the Americans with Disabilities Act.

LIST OF PARTIES

As indicated in the Petition for Writ of Certiorari, there are no parties to this proceeding that do not appear in the case caption. However, as set forth in this brief, the individual Respondents, in their individual capacities, are not proper parties.

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OPINIONS BELOW

The opinion of the Appellate Court of Illinois, Fourth District, is set forth at *Brewer v. Board of Trustees of the University of Illinois*, 339 Ill. App. 3d 1074 (4th Dist. 2003) (Petitioner's App. C). The denial of the petition for leave to appeal by the Illinois Supreme Court is set forth at *Brewer v. Board of Trustees of the University of Illinois*, 2003 Ill. LEXIS 2153 (2003) (Petitioner's App. F). The amended judgment of the Circuit Court of Champaign County, Illinois is not published. (Petitioner's App. B).

STATEMENT OF JURISDICTION

The Appellate Court of Illinois, Fourth District, entered its judgment on June 17, 2003. No petition for rehearing was filed. The Supreme Court of Illinois denied the Petition for Appeal as a Matter of Right or Leave to Appeal on October 7, 2003.

Respondents agree that Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SUPREMACY CLAUSE

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any

Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S.C.A. Const. art. VI, cl. 2.

ELEVENTH AMENDMENT

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S.C.A. Const. amend. XI.

STATE LAWSUIT IMMUNITY ACT

Sec. 1. Except as provided in the Illinois Public Labor Relations Act [5 ILCS 315/1 et seq.], the Court of Claims Act [705 ILCS 505/1 et seq.], and the State Officials and Employees Ethics Act, the State of Illinois shall not be made a defendant or party in any court.

745 ILCS 5/1 (2004)

Sec. 1.5. Exceptions; State employees. (a) An employee, former employee, or prospective employee of the State who is aggrieved by any conduct or action or inaction of the State that would constitute a violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq., as amended, if committed by an employer covered by that Act may bring an action under the Age Discrimination in Employment Act of 1967 against the State in State circuit court or federal court.

(b) An employee of the State who is aggrieved by any conduct or action or inaction of the State that would constitute a violation of the Fair Labor Standards Act of

1938, 29 U.S.C. 201 et seq., as amended, if committed by an employer covered by that Act may bring an action under the Fair Labor Standards Act of 1938 against the State in State circuit court or federal court.

(c) An employee, former employee, or prospective employee of the State who is aggrieved by any conduct or action or inaction of the State that would constitute a violation of the Family and Medical Leave Act, 29 U.S.C. 2601 et seq., as amended, if committed by an employer covered by that Act may bring an action under the Family and Medical Leave Act against the State in State circuit court or federal court.

(d) An employee, former employee, or prospective employee of the State who is aggrieved by any conduct or action or inaction of the State that would constitute a violation of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., as amended, if committed by an employer covered by that Act may bring an action under the Americans with Disabilities Act of 1990 against the State in State circuit court or federal court.

(e) An employee, former employee, or prospective employee of the State who is aggrieved by any conduct or action or inaction of the State that would constitute a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., as amended, if committed by an employer covered by that Act may bring an action under Title VII of the Civil Rights Act of 1964 against the State in State circuit court or federal court.

This section is effective January 1, 2004 pursuant to Ill. Const. (1970), art. IV, § 10 and 5 ILCS 75/2

745 ILCS 5/1.5

ILLINOIS HUMAN RIGHTS ACT

§ 8-111. Court Proceedings

(C) Limitation. Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act.

775 ILCS 5/8-111(C)

(the Act in its entirety is set forth in Petitioner's App. D)

STATEMENT OF THE CASE

On June 10, 2002, Petitioner filed a five count complaint in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois. Petitioner asserts that he lost both his job and his status as a student at the University of Illinois due to alleged race discrimination, an alleged failure to accommodate his purported disability, and in alleged retaliation for his opposition to discrimination. (R. C1-13). The individual Respondents are all employees of the Board of Trustees. (R. C1-13).

Count I asserts a Title VII claim against all Respondents. Petitioner alleges that he was terminated as a result of alleged race discrimination. (R. C1-13). Count II asserts an Americans with Disabilities Act claim against the Board of Trustees and Respondents Thompson and Hendricks. Petitioner alleges that he was disabled and that the disability was not accommodated. (R. C1-13). Count III asserts a § 1983 action against the individual Respondents, and Petitioner asserts that he was discriminated against on the basis of his race. (R. C1-13). Count IV

asserts a Title VI action against all Respondents, and it is again premised upon alleged race discrimination. (R. C1-13). Finally, Count V asserts a retaliation claim against all Respondents, and the alleged retaliation is premised upon alleged discrimination and reporting of discrimination. (R. C1-13).

On September 23, 2002, the Circuit Court entered an order dismissing the complaint. (R. C62). That judgment was modified on October 21, 2002. (R. C62 and A3-A5). Respondents' Motion to Dismiss the individual Respondents from Counts I, II, and IV was granted with prejudice. (R. C62 and A3-A5). As to those counts, the individual Respondents had asserted that they were not amenable to suit under the ADA, Title VI, and Title VII. Petitioner conceded this argument, and the Court agreed. All of Respondents' other arguments were directed at the subject matter jurisdiction of the court. Petitioner did not appeal the dismissal of the individual Respondents from Counts I, II, and IV. Consequently, the individual Respondents, in their individual capacities, are not proper parties before this Court. On all other issues, the judgment was modified to reflect that the dismissal for want of subject matter jurisdiction was without prejudice.

Petitioner subsequently filed this identical case in the United States District Court for the Central District of Illinois, Urbana Division, case number 02-2204 (Respondents' Appendix pp. 1-7). On May 15, 2003, the United States District Court entered an Order dismissing several claims (Respondents' Appendix pp. 8-22). The District Court ruled that the ADA claim set forth in Count II was barred by the Eleventh Amendment. The District Court also dismissed the Section 1983 claim in Count III as time barred, and the Court also dismissed the claims against

the individual Respondents, in their individual capacities, as to the Title VII claims (Counts I and V) and the Title VI claim (Count IV). Finally, the District Court stayed the remainder of the case pursuant to the abstention doctrine set forth in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), and it remains stayed pending the resolution of this petition.

After filing the identical case in the United States District Court, Petitioner appealed the State Circuit Court's decision in the case to the Appellate Court of Illinois, Fourth District. On June 17, 2003, the Appellate Court entered an order affirming the trial court. *Brewer v. Board of Trustees of the University of Illinois*, 339 Ill. App. 3d 1074 (4th Dist. 2003). On October 7, 2003, the Illinois Supreme Court denied Petitioner's petition for appeal as a matter of right or leave to appeal. *Brewer v. Board of Trustees of the University of Illinois*, 2003 Ill. LEXIS 2153 (2003).

ARGUMENT

Illinois courts do not discriminate against federal causes of action, and this case is against the State

Petitioner's reliance on *Howlett v. Rose*, 496 U.S. 356 (1990) is completely misplaced. In *Howlett*, the question was whether a school board had a state law defense of "sovereign immunity" when it was "otherwise subject to suit in a Florida court. . . ." *Id.* at 358. The Court noted:

> As it construed the law, Florida has extended absolute immunity from suit not only to the State and its arms but also to municipalities, counties,

> and school districts who might otherwise be subject to suit under § 1983 in federal court. That holding raises the concern that the state court may be evading federal law and discriminating against federal causes of action.

Id. at 365-366. The Court held that "the Florida court's refusal to entertain one discrete category of § 1983 claims, when the court entertains similar state law actions against state defendants, violates the Supremacy Clause." *Id.* at 375.

This case is not a case involving a local public entity, nor is it a case where an Illinois court is discriminating against a discrete federal cause of action. This is a case against an arm of the State of Illinois. The Seventh Circuit has repeatedly recognized that the Board of Trustees is an arm of the State of Illinois, and as such, it is entitled to the sovereign immunity protections of the Eleventh Amendment. *Cannon v. University of Health Sciences/Chicago Medical School*, 710 F.2d 351, 356-357 (7th Cir. 1983); *Kroll v. Board of Trustees of the University of Illinois*, 934 F.2d 904, 906-907 (7th Cir. 1991); *Kaimowitz v. Board of Trustees of the University of Illinois*, 951 F.2d 765, 767-768 (7th Cir. 1991).

As an arm of the State, the Board of Trustees is not amenable to suit in state court for "similar state law actions." As the Illinois Appellate Court noted in this case:

> As we explained in *Cooper*, 331 Ill. App. 3d at 1097, 772 N.E.2d at 398, the Illinois Constitution of 1970 abolished sovereign immunity but allowed the General Assembly to reinstate it. Ill. Const. 1970, art. XIII, § 4. The General Assembly reinstated sovereign immunity by enacting the *State Lawsuit Immunity Act* (Immunity Act),

> which provides: "Except as provided in the []Illinois Public Labor Relations Act[] [*5 ILCS 315/1 through 27* (West 2000)], * * * or except as provided in [the Court of Claims Act (*705 ILCS 505/1 through 29* (West 2000))], * * * the State of Illinois shall not be made a defendant or party in any court." (Emphasis added.) *745 ILCS 5/1* (West 2000).

Brewer v. Board of Trustees of the University of Illinois, 339 Ill. App. 3d 1074, 1079 (4th Dist. 2003). With the interplay between the Eleventh Amendment, the State Lawsuit Immunity Act, and the Illinois Human Rights Act, the State is not subject to such a suit in the Circuit Court, whether the basis of the suit derives from state or federal law.

The Illinois Appellate Court correctly recognized these fundamental distinctions:

> For two reasons, *Howlett* is distinguishable from the present case. First, the school board in *Howlett* was a local governmental entity, not an arm of the state, and, therefore, under federal law, it did not partake of Florida's sovereign immunity. *Howlett*, 496 U.S. at 365-66, 110 L. Ed. 2d at 346, 110 S. Ct. at 2437. In the present case, the Board is an arm of the State, not a local governmental entity, and has sovereign immunity. *Board of Trustees of the University of Illinois*, 293 Ill. App. 3d at 901, 689 N.E.2d at 127.
>
> Second, under Florida's own laws, Florida courts had jurisdiction over section 1983 claims. *Howlett*, 496 U.S. at 380, 110 L. Ed. 2d at 356, 110 S. Ct. at 2445. The Supreme Court explained:

"When a state court refuses jurisdiction because of a neutral state rule regarding the administration of the courts, we must act with utmost caution before deciding that it is obligated to entertain the claim. [Citations.] The requirement that a state court of competent jurisdiction treat federal law as the law of the land does not necessarily include within it a requirement that the state create a court competent to hear the case in which the federal claim is presented. The general rule, 'bottomed deeply in belief in the importance of state control of state judicial procedure, is that federal law takes the state courts as it finds them.' [H. Hart, The Relations Between State and Federal Law, 54 Colum. L. Rev. 489, 508 (1954); citations.] The states thus have great latitude to establish the structure and jurisdiction of their own courts." (Emphases added.) *Howlett*, 496 U.S. at 372, 110 L. Ed. 2d at 350-51, 110 S. Ct. at 2440-41.

Illinois courts have no jurisdiction over plaintiff's claims, regardless of whether he couches them in a state statute or federal statute, because they are "inextricably linked" to alleged civil rights violations. See *Maksimovic v. Tsogalis*, 177 Ill. 2d 511, 514, 687 N.E.2d 21, 22, 227 Ill. Dec. 98 (1997); 775 ILCS 5/8-111(C) (West 2000). Federal law must take Illinois courts as it finds them. "Congress can utilize state courts to enforce federal rights, but it must do so subject to all conditions which the state court imposes on other litigants." *Faulkner-King*, 226 Ill. App. 3d at 970, 590 N.E.2d at 518. Illinois does not "discriminate against federal causes of action."

(*Howlett*, 496 U.S. at 366, 110 L. Ed. 2d at 346, 110 S. Ct. at 2437); its courts do not Adjudicate claims of discrimination arising from state law,

> either – to the extent those claims are "the subjects of * * * alleged civil rights violations." 775 ILCS 5/8-111(C) (West 2000).

Brewer v. Board of Trustees of the University of Illinois, 339 Ill. App. 3d 1074, 1082-1083 (4th Dist. 2003).

This Court has held that the States are not "persons" subject to suit under § 1983, and therefore, a State cannot be sued in state or federal court under § 1983. *Howlett v. Rose*, 496 U.S. 356, 376 (1990). Petitioner's Supremacy Clause argument is seemingly directed to his ADA claim. This Court has held that Congress did not properly abrogate the States' sovereign immunity in enacting the ADA. *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 374 (2001). Consequently, the Eleventh Amendment bars ADA suits brought by private individuals against the States. *Id.* Petitioner cannot evade the Eleventh Amendment by filing suit in a State's own courts; the Supreme Court has explicitly held that the Eleventh Amendment also bars such an action. *Alden v. Maine*, 527 U.S. 706, 119 S. Ct. 2240, 2269 (1999). Since the Board of Trustees is an arm of the State, the Eleventh Amendment bars the ADA claim.

Petitioner asserts that the Illinois Human Rights Act violates the Supremacy Clause, and he should be able to bring his ADA claim in State Circuit Court, as opposed to the Illinois Human Rights Commission. However, as set forth in the Illinois Appellate Court's opinion in this case, there is no discrimination against federal causes of action in requiring Petitioner to repair to the Illinois Human Rights Commission, as similar causes of action premised upon state law also must be brought before the Illinois Human Rights Commission.

Petitioner makes the same argument, citing the same cases, that was rejected by the Illinois Appellate Court in *Faulkner-King v. Wicks*, 226 Ill. App. 3d 962, 970-971 (4th Dist. 1992), *appeal denied*, 146 Ill. 2d 626 (1992), *cert. denied*, 507 U.S. 960 (1993). Like the plaintiff in *Faulkner-King*, Plaintiff relies primarily upon *Donnelly v. Yellow Freight System, Inc.*, 874 F.2d 402 (7th Cir. 1989) and *Howlett v. Rose*, 496 U.S. 356 (1990). In specifically responding to those cases, the Illinois Appellate Court stated:

> The United States Congress cannot require circuit courts to hear certain disputes. Congress can utilize State courts to enforce Federal rights, but it must do so subject to all conditions which the State court imposes on other litigants. (*Brown v. Gerdes* (1944), 321 U.S. 178, 190, 88 L. Ed. 659, 666-67, 64 S. Ct. 487, 493.) Although circuit courts are courts of general jurisdiction, the legislature, by authority of the State Constitution, has restricted that jurisdiction when the claim involves a controversy covered by the Act. Courts have consistently ruled the Act is the exclusive source of a remedy for an employment-discrimination claim. Circuit courts cannot be compelled to accept such cases under the guise of Federal authority.

Faulkner-King v. Wicks, 226 Ill. App. 3d 962, 970-971 (4th Dist. 1992). The Illinois Appellate Court reaffirmed this holding just last summer in *Cooper v. Illinois State University*, 331 Ill. App. 3d 1094 (4th Dist. 2002).

The Illinois Appellate Court's holdings in *Faulkner-King* and *Cooper*, in the context of suits against the State, are supported by this Court's ruling in *Alden v. Maine*, 527 U.S. 706 (1999). In *Alden*, a group of probation officers

filed suit against their employer, the State of Maine, under the federal Fair Labor Standards Act. *Id.* at 711-712. The case was first filed in federal court, and that suit was dismissed pursuant to the Eleventh Amendment. *Id.* The probation officers re-filed the case in state court. *Id.* The state trial court dismissed the case on the basis of sovereign immunity, and the Maine Supreme Court affirmed the dismissal. *Id.*

The Supreme Court affirmed the Maine Supreme Court and stated:

> In light of history, practice, precedent, and the structure of the Constitution, we hold that the States retain immunity from private suit in their own courts, an immunity beyond the congressional power to abrogate by Article I legislation.

Id. at 754. It is interesting to note that the *Alden* Court specifically distinguished the *Howlett* case upon which Petitioner places so much reliance; "[t]he decision did not address the question of Congress' power to compel a state court to entertain an action against a nonconsenting state." *Id.* at 740. With respect to federal legislation enacted under Article I, the States are sovereignly immune from suits brought in their own courts by individuals under such legislation, unless and to the extent that the States consent to suit. *Id.* at 755. It certainly follows that the States have the authority to tailor that consent, since as a sovereign they need not consent at all.

As the Illinois Appellate Court first made clear in *Faulkner-King*, there is nothing unconstitutional with respect to the scheme of the Illinois Human Rights Act. *Alden* merely reinforces the logic of that holding with respect to the State.

At the time this case was filed, the State had not consented

Petitioner also argues that the State of Illinois has consented to be sued under the ADA in the State's courts of general jurisdiction. That argument was squarely rejected by the Illinois Appellate Court in *Cooper v. Illinois State University*, 331 Ill. App. 3d 1094 (4th Dist. 2002). With this case, the Illinois Appellate Court has ruled three times that those types of claims must be brought before the Illinois Department of Human Rights and the Illinois Human Rights Commission. *Cooper v. Illinois State University*, 331 Ill. App. 3d 1094, 1100 (4th Dist. 2002); *Faulkner-King v. Wicks*, 226 Ill. App. 3d 962, 970 (4th Dist. 1992), *appeal denied*, 146 Ill. 2d 626 (1992), *cert. denied*, 507 U.S. 960 (1993); *Brewer v. Board of Trustees of the University of Illinois*, 339 Ill. App. 3d 1074, 1078 (4th Dist. 2003).

No rational reading of *Cooper* or *Faulkner-King* leads to the conclusion argued by Petitioner. Inexplicably, Petitioner argues that *Cooper* stands for the proposition that the State has consented to suit in its courts of general jurisdiction. The exact opposite is true. The *Cooper* court stated that "we adhere to *Faulkner-King*," and the Illinois Appellate Court affirmed the trial court's dismissal of the case because of sovereign immunity principles. *Id.* at 1100. Plaintiff misunderstands the State's consent to suit; that consent, as discussed in *Faulkner-King*, *Cooper*, and *Brewer*, requires that these suits be brought only before the Illinois Human Rights Commission. *Id.* at 1097-1099. The Commission is the "exclusive source for redress of civil rights violations." *Id. quoting Village of Maywood Board of Fire & Police Commissioners v. Department of Human*

Rights, 296 Ill. App. 3d 570, 581 (1st. Dist.), *appeal denied*, 179 Ill. 2d 626 (1998).

It is both ironic and fatal to Petitioner's consent argument that, during the pendency of this case, the State of Illinois did consent to ADA cases being brought by state employees in circuit court or federal court, effective January 1, 2004. 745 ILCS 5/1.5. The Illinois General Assembly specifically consented by passing that statute, and the Illinois General Assembly selected the effective date. That statute is clear evidence that the State had not consented to suit prior to January 1, 2004.

CONCLUSION

WHEREFORE, Respondents respectfully request that this Court deny the petition for writ of certiorari.

Respectfully submitted,

Board of Trustees of the University of Illinois, Kerrin Thompson, Denise Hendricks, Wallace Hendricks and Peter Feuille, Respondents

RICHARD P. KLAUS
HEYL, ROYSTER, VOELKER & ALLEN

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

LONNELL BREWER,	)	
Plaintiff,	)	
v.	)	
BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, and KERRIN THOMPSON, L. DENISE HENDRICKS, WALLACE HENDRICKS, and PETER FEUILLE, in their individual capacities,	)	**Case No. 02-2204**
Defendants.	)	

ORDER

(Filed May 15, 2003)

In September 2002, Plaintiff, Lonnell Brewer, filed a Complaint (#1), against Defendants Board of Trustees of the University of Illinois, Kerrin Thompson, L. Denise Hendricks, Wallace Hendricks, and Peter Feuille, alleging discrimination in employment and violation of his constitutional and statutory rights in connection with his education. Federal jurisdiction is based on federal question under 28 U.S.C. § 1331. In January 2003, Defendants filed a Motion To Abstain or in the Alternative Dismiss (#6). After reviewing the parties' pleadings and memoranda, this Court **GRANTS** Defendants' Motion To Abstain or in the Alternative Dismiss (#6).

I. Background

The following background is taken from the complaint. Plaintiff is an African-American male with a learning disability that substantially impairs one or more major life activities. He was employed at the University's Personnel Services Office (hereinafter "PSO") as a research assistant from August 1997 through April 1998. He was enrolled in the master's degree program in the University's Institute of Labor and Industrial Relations (hereinafter "ILIR") from fall semester 1997 through June 18, 1998.

Defendant Board of Trustees is the University's governing body. At relevant times, Defendant Denise Hendricks was director of PSO and Defendant Thompson was special assistant to the director of PSO and Plaintiff's supervisor. Defendant Wallace Hendricks was a professor at the ILIR and Defendant Feuille was director of the ILIR. Plaintiff is suing the individual Defendants in both their individual and official capacities.

Plaintiff's complaint consists of five counts, as follows: (1) Count I, against all Defendants, alleges race discrimination pursuant to Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, *et seq.*); (2) Count II alleges that Defendants Board of Trustees, Thompson, and Hendricks violated the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*) (hereinafter "ADA"); (3) Count III alleges that Defendants Thompson, Denise Hendricks, Wallace Hendricks, and Feuille violated Plaintiffs' constitutional and statutory rights; (4) Count IV, against all Defendants, alleges a violation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d, *et seq.*,); and (5) Count V, against all Defendants, alleges retaliation.

In June 2002, before filing this suit, Plaintiff filed an identical complaint in state court. (#1, ¶ 18.) The circuit court dismissed the complaint for lack of jurisdiction. Plaintiff appealed and the case is currently pending at the appellate level (Case No. 4 02 0885). (#1, ¶ 18.)

II. Standard of Review for Motion To Dismiss

The purpose of a motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6) is to test the sufficiency of the complaint, not to decide the merits of the case. *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). When considering a motion to dismiss, the Court must accept all well-pleaded factual allegations in the claim as true, and draw all reasonable inferences in favor of the nonmoving party. *Gutierrez v. Peters*, 111 F.3d 1364, 1368-69 (7th Cir. 1997). The Court should dismiss the claim only if the nonmoving party cannot prove any set of facts consistent with the allegations of the complaint that would entitle him to relief. *Turner/Ozanne v. Hyman/Power*, 111 F.3d 1312, 1319-20 (7th Cir. 1997).

III. Analysis

Defendants argue that the Court should stay this case under the *Colorado River* abstention doctrine. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). In addition, Defendants contend that the Court should dismiss certain claims for the following reasons: (1) the Eleventh Amendment bars the ADA claim; (2) there is no basis for individual liability under Title VII, Title VI, or the ADA; and (3) the statute of limitations bars the Title VI and Title VII claims brought pursuant to Section 1983.

A. Motion To Dismiss

Plaintiff concedes that the Eleventh Amendment bars his ADA claim and will amend his complaint to eliminate that claim. (Plaintiff's Memorandum in Opposition to Defendants' Motion To Abstain or in the Alternative Dismiss, #9, p. 4.) Plaintiff also concedes that there is no basis for individual liability under Title VII and Title VI. (#9, p. 4.) Finally, Plaintiff's counsel has acknowledged that she has not responded to the argument that the statute of limitations bars the Section 1983 claim. As a result, the Court dismisses those claims.

B. Motion To Abstain

Defendants argue that the Court should abstain from exercising jurisdiction over the suit because the same matter is pending in state court.

When parallel cases in federal court and state courts cover the same issues, a district court may stay federal proceedings when exceptional circumstances exist. *Interstate Material Corp. v. City of Chicago*, 847 F.2d 1285, 1287 (7th Cir. 1988). The Court's first step is to determine whether the state and federal proceedings are parallel, that is, whether they involve substantially the same parties litigating substantially the same issues. *See Administrative Committee v. Gauf*, 188 F.3d 767, 772 (7th Cir. 1999). In this case, Plaintiff's complaint acknowledges that he filed an identical complaint in state court (Case No. 02 L 128). (#1, ¶ 18.) Thus, the two suits are clearly parallel.

However, abstention from the exercise of federal jurisdiction is the exception, not the rule. *Colorado River*,

424 U.S. at 813; *Finova Capital Corp. v. Ryan Helicopters U.S.A., Inc.*, No. 98 C 0761, 1998 WL 698900, *3 (N.D. Ill. Oct. 2, 1998). The Court must balance the following factors to determine whether exceptional circumstances warrant abstention: (1) whether the state or federal court has assumed jurisdiction over property; (2) the geographical inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which jurisdiction was obtained by each forum; (5) the source of governing law; (6) the adequacy of the state court action to protect the rights of federal plaintiffs; (7) the relative progress of the state and federal proceedings; (8) the presence or absence of concurrent jurisdiction; and (9) the vexatious or contrived nature of the federal claim. *Id.*; *see Colorado River*, 424 U.S. at 818; *Caminiti & Iatarola, Ltd. v. Behnke Warehousing, Inc.*, 962 F.2d 698, 701 (7th Cir. 1992).

Defendants argue that abstention is in order for the following reason: (1) the desirability of avoiding piecemeal litigation; (2) the state court case was filed first; (3) the state court case has progressed to the appellate level; and (4) the filing of the ADA claim was vexatious.

Plaintiff argues that the balancing test fails to support abstention because (1) it is very doubtful that the state litigation will be an adequate vehicle for resolution of all issues; (2) no discovery has been conducted in the state forum, thus, Defendants have suffered little burden; and (3) further delay will substantially prejudice Plaintiff due to potential loss of critical documents and witness testimony.

After considering the factors in light of the allegations in this case and the arguments of both parties, the Court

concludes that the following factors are essentially neutral: (1) whether the state or federal court has assumed jurisdiction over property; (2) the geographical inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; and (4) the presence or absence of concurrent jurisdiction. In addition, the Court concludes that Plaintiff's federal claims are not vexatious or contrived.

Notwithstanding that Plaintiff's claims are based on federal law, which weighs slightly on the side of a federal forum, the Court has no doubt that the state court is capable of resolving all disputes. Similarly, the Court concludes that the state court action will adequately protect Plaintiff's rights. On the other hand, the factors involving the order in which jurisdiction was obtained by the two courts and the relative progress of the state and federal proceedings weigh in favor of deferring to the state court because Plaintiff filed in state court first and that case is now awaiting appellate review.

Overall, the balancing process favors deferring to the state court. However, what makes this situation "exceptional" and what ultimately convinced the Court that abstention is appropriate here is the timing of Plaintiff's filings. Initially, he chose to file in state court. Only after receiving an unfavorable ruling in that forum did he elect to file the same suit in federal court. To refrain from abstaining would appear to reward forum shopping. Therefore, the Court will abstain in deference to the state court's decision on appeal.

The Seventh Circuit has consistently held that a stay is the appropriate procedural mechanism for a district court to employ when deferring to a parallel state court

proceeding under the *Colorado River* doctrine. *See Lumen Construction, Inc. v. Brant Construction Co., Inc.*, 780 F.2d 691, 698 (7th Cir. 1986). Accordingly, the Court stays this case pending resolution of the state case.

IV. Summary

For the reasons set forth above, this Court **GRANTS** Defendants' motion to dismiss as to the ADA claim in Count II, the Section 1983 claim in Count III, and the claims against Defendants in their individual capacities in the Title VII (Counts I and V) and Title VI (Count IV) claims. In addition, the Court **GRANTS** the Motion to Abstain (#6). This case is stayed pending the outcome of the parallel state court case.

ENTERED this 15th day of May, 2003.

/s/ David G. Bernthal
DAVID G. BERNTHAL
UNITED STATES
MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA/DANVILLE DIVISION

LONNELL BREWER	)	
Plaintiff,	)	
vs.	)	**CASE NO. 02-2204**
BOARD OF TRUSTEES OF UNIVERSITY OF ILLINOIS	)	
AND	)	**JURY TRIAL DEMANDED**
KERRIN THOMPSON, L. DENISE HENDRICKS, WALLACE HENDRICKS, PETER FEUILLE, In their Individual Capacities	)	
Defendants.	)	

COMPLAINT

(Filed Sep. 28, 2002)

COMES NOW, Plaintiff, Lonnell Brewer, (hereinafter referred to as "Plaintiff") by and through his attorney, Joanna C. Fryer, for his Complaint against Defendants, The Board of Trustees of the University of Illinois (hereinafter referred to as "the University"), Kerrin Thompson, (hereinafter referred to as "Thompson"), L. Denise Hendricks (hereinafter "Denise Hendricks"), Wallace Hendricks (hereinafter referred to as "Professor Hendricks"), and Peter Feuille (hereinafter referred to as "Feuille") states to the Court as follows:

JURISDICTION AND VENUE

1. This is an action against Defendants for discrimination in Plaintiff's employment and education at Defendant University in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d, et seq., Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, et seq, and 42 U.S.C. Section 1983.

2. Jurisdiction of this Court is proper pursuant to the above referenced Acts and statutes, and 28 U.S.C. 1331.

3. This is the county in which Defendant University has its principal office, and in which, upon information and belief, one or more individual defendants reside. In addition, this is the county in which a substantial part of the events or omissions giving rise to the claim occurred. Therefore venue is proper pursuant to 28 U.S.C. 1391(b).

PARTIES

4. Plaintiff is an African-American male with a learning disability which substantially impairs one or more major life activities including, but not limited to, reading and other tasks relating to cognitive processing.

5. Plaintiff was employed at Defendant University's Personnel Services Office, University of Illinois, Urbana-Champaign as a Research Assistant to Personnel Services from August 29, 1997 through April 22, 1998.

6. Plaintiff was enrolled in Defendant University's Master's Degree program in the Institute of Labor and Industrial Relations ("ILIR") from the beginning of the fall semester, 1997 through June 18, 1998.

7. Defendant Board of Trustees of the University of Illinois is the governing body of the University of Illinois. The events described herein occurred at the Urbana-Champaign campus of Defendant University.

8. Defendant Thompson was, at all times relevant hereto, the Special Assistant to the Director of Personnel Services Office ("PSO") and Plaintiff's immediate supervisor while Plaintiff was employed at the PSO.

9. Defendant Denise Hendricks was, at all times relevant hereto, the Assistant Vice President of Human Resources, Associate Vice Chancellor for Administrative Affairs and Director of the PSO.

10. Defendant Professor Hendricks was, at all times relevant hereto, a Professor at Defendant University in the ILIR.

11. Defendant Feuille was, at all times relevant hereto, a Professor at Defendant University and the Director of the ILIR.

12. This action is brought against the individually named Defendants in their official and individual capacities.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

13. Defendant University employed more than twenty (20) people at all times relevant hereto, and is an "employer" within the meaning of Title VII and the ADA.

14. At all times relevant hereto, the individually named defendants were acting under color of state law.

15. Plaintiff filed a timely charge of race and disability discrimination with the Equal Employment Opportunity Commission. ("EEOC").

16. Plaintiff's retaliation claims are reasonably related to the allegations contained in the EEOC Charge of Discrimination.

17. Plaintiff received his Notice of Right to Sue from the EEOC on or about March 19, 2002.

18. Plaintiff filed an identical Complaint in Illinois state court (Circuit Court of Champaign County, Illinois, Case No. 02 L 128) within ninety (90) days of receiving his Notice of Right to Sue. Defendants filed a Motion to Dismiss in this matter which was heard by the state court on September 23, 2002. The state court issued an immediate ruling which is not yet final, dismissing the state court Complaint for lack of jurisdiction.

19. The above-referenced ninety-day period is tolled while the state court proceeding is pending.

20. In the event that the Court determines that the ninety-day period is not so tolled, plaintiff is entitled to equitable tolling for the following reasons:

    a. The EEOC determined that there was probable cause to find that disability discrimination had occurred in this case;

    b. Due to sovereign immunity issues, plaintiff was compelled to bring the ADA claim referenced below in state court;

    c. As the facts set forth below demonstrate, plaintiff's ADA claim is inextricably intertwined with plaintiff's additional federal claims. Accordingly, plaintiff was compelled to bring all claims in a single forum;

d. Illinois courts, including the state court in which plaintiff's original complaint was filed, take the position that the Illinois Human Rights Act pre-empts all civil rights actions, even those based on federal law, and that state courts do not have jurisdiction to hear federal civil rights claims of any kind. This position is in direct contradiction to federal case law directly on point and is, in fact, violation of the Supremacy Clause.

e. This action was filed promptly following the adverse determination by the state court.

21. Throughout the course of his employment with PSO, Plaintiff performed his job responsibilities satisfactorily or better.

22. Plaintiff was terminated from his employment with Defendant University on April 22, 1998.

23. Throughout the course of his participation in the ILIR Master's Degree program, Plaintiff's academic performance was satisfactory or better.

24. Plaintiff was terminated from the ILIR Master's Degree program on June 18, 1998.

25. Each of the individually named Defendants participated in or substantially influenced the decisions to terminate Plaintiff from his employment and from the Master's Degree program.

26. Plaintiff satisfied the requirements for obtaining his Master's Degree from Defendant University; however Defendant University has failed and refused to confer said degree to Plaintiff for the impermissible reasons described herein.

COUNT I – RACE DISCRIMINATION
TITLE VII
(ALL DEFENDANTS)

COMES NOW plaintiff, and for Count I of his Complaint against all Defendants states:

27. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 26 as if fully set forth herein.

28. During the course of his employment with Defendant University, plaintiff was subjected to continuous and ongoing acts of race discrimination from supervisors, managers and faculty of Defendant University including, but not limited to, the individually named defendants.

29. Defendants' discriminatory intent was evidenced, in part, by Defendants' continued references, direct and indirect, to Plaintiff race and interracial relationship with his fiancé, a white woman, throughout the course of his employment and Defendant Thompson's comment at the time Plaintiff was terminated that she was "done with you people" followed by the statement "I have had it with you nigger."

30. ILIR faculty and staff and the PSO frequently communicated throughout the course of Plaintiff's employment regarding Plaintiff's employment and educational status, including discussions concerning Plaintiff's termination from his employment and the Master's Degree program. Thus, ILIR faculty and staff, including Defendant Professor Hendricks and Defendant Feuille participated in adverse employment actions taken against Plaintiff, including termination.

31. Said acts and omissions were intentional and included, but were not limited to, unfavorable performance reviews, communications to ILIR faculty and

staff unfavorable to Plaintiff and detrimental to his academic career, and termination of Plaintiff's employment.

32. Defendants' conduct in discriminating against plaintiff on the basis of race in the above-referenced ongoing and continual manner was in violation of Title VII.

33. As a direct and proximate result of the above-referenced acts of discrimination, Plaintiff has suffered and continues to suffer actual damages, including lost wages and benefits, emotional distress, humiliation, loss of reputation and mental suffering.

34. As a direct result of the discriminatory acts of Defendants, Plaintiff has incurred, and will continue to incur, substantial attorney fees and costs in connection with this matter.

WHEREFORE, Plaintiff prays for judgment against Defendants:

a) for his actual damages, including back pay, front pay, and other economic benefits of employment;

b) for compensatory damages to compensate for emotional distress, humiliation, loss of reputation and mental suffering;

c) for prejudgment and post judgment interest as provided by law;

d) for his costs incurred herein, including reasonable attorney fees; and

e) for such other and further relief which the Court deems just and proper.

COUNT II – DISABILITY DISCRIMINATION FAILURE TO ACCOMMODATE UNDER THE ADA (Defendants University, Thompson and Hendricks)

COMES NOW Plaintiff and for Count II of his Complaint against Defendants University, Thompson and Denise Hendricks states:

35. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 34 as if fully set forth herein.

36. As noted above, Plaintiff has a learning disability/developmental disorder which substantially limits one or more major life activities, including reading and other tasks relating to cognitive processing. Psychologists have concluded that Plaintiff's symptoms are consistent with DSMIII-R diagnosis of Specific Developmental Disorder – Not Otherwise Specified (315.90).

37. Defendants were informed of Plaintiff's disability in writing prior to his employment, as well as informed of reasonable accommodations Plaintiff required including, but not limited to, use of special computer programs for persons with learning disabilities, additional time to complete projects and/or flexibility with regard to deadlines for completing projects.

38. At all times relevant hereto, Plaintiff was a qualified individual who, with or without reasonable accommodation, could perform the essential functions of his position within the meaning of the ADA.

39. Defendants failed to accommodate Plaintiff's disability by refusing, on numerous occasions to provide him with the above-referenced accommodations.

40. The above-described failure to accommodate was in violation of ADA.

41. As a direct and proximate result of the above-referenced acts and omissions of Defendants, Plaintiff has suffered and will continue to suffer damages, including lost wages and benefits, emotional distress, humiliation, loss of reputation and mental suffering.

42. Plaintiff has incurred and will continue to incur substantial attorney fees and costs in connection with this matter.

WHEREFORE, Plaintiff prays for judgment against Defendants:

a) for his actual damages, including back pay, front pay, and other economic benefits of employment;

b) for compensatory damages to compensate for emotional distress, humiliation, loss of reputation and mental suffering;

c) for prejudgment and post judgment interest as provided by law;

d) for his costs incurred herein, including reasonable attorney fees; and

e) for such other and further relief which the Court deems just and proper.

COUNT III – VIOLATION OF CONSTITUTIONAL AND STATUTORY RIGHTS IN VIOLATION OF 42 U.S.C. § 1983 (Defendants Named in Their Individual Capacities)

COMES NOW plaintiff, and for Count III of his Complaint against all individually-named Defendants, alleges:

43. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 42 as if fully set forth herein.

44. Plaintiff is African-American, and, therefore, a member of a protected class for purposes of § 1983.

45. Plaintiff was treated differently than similarly situated non-African American employees in that he was under constant scrutiny, both in his capacity as an employee and his capacity as a student, because he was "the first African-American in the PSO."

46. Plaintiff was subjected to disparate performance and academic standards, and ultimately terminated from both his employment and the Master's Degree program under circumstances and for alleged reasons that would not have resulted in the termination of non-African-American employees/students.

47. Defendants acted with discriminatory intent as evidenced, in part, by the circumstances and comments set forth above.

48. At all times relevant hereto, Defendants were acting under color of state law.

49. The above-referenced acts of Defendants constitute violations of clearly established constitutional rights in that said acts of race discrimination violated plaintiff's right to equal protection under the Fourteenth Amendment to the U.S. Constitution and Title VI.

50. The above-referenced acts of Defendants constitute violations of clearly established federal statutory rights in that said acts of disability discrimination violated the ADA.

51. The disability discrimination was intentional as evidenced by Defendants' adverse comments concerning Plaintiff's accommodation requests and comments that

Plaintiff "could not make it in the real world" due to his disability.

52. At the time these acts occurred, a reasonable University staff or faculty member would have understood that such acts constituted a violation of plaintiff's equal protection rights and rights under the ADA and Title VI.

53. The above-described acts of Defendants constitute disparate treatment of plaintiff as compared to similarly situated non-African-American individuals and/or non-disabled individuals, in violation of 42 U.S.C. § 1983.

54. Defendants' acts were outrageous due to their evil motive or reckless indifference to the rights of plaintiff, justifying an award of punitive damages.

55. As a result of Defendants' violation of plaintiff's constitutional and statutory rights, plaintiff has suffered and will continue to suffer damages, including lost wages and benefits, emotional distress, humiliation, loss of reputation and mental suffering.

56. As a result of Defendants' violation of plaintiff's constitutional and statutory rights, Plaintiff has incurred and will continue to incur substantial attorney fees and costs in connection with this matter.

WHEREFORE, plaintiff prays for judgment against all Defendants named in their individual capacity:

a) for his actual damages, including back pay, front pay, and other economic benefits of employment;

b) for compensatory damages to compensate for emotional distress, humiliation, loss of reputation and mental suffering;

c) for prejudgment and post judgment interest as provided by law;

d) for his costs incurred herein, including reasonable attorney fees;

e) for punitive damages; and

f) for such other and further relief which the Court deems just and proper.

COUNT IV – VIOLATION OF TITLE VI
(All Defendants)

57. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 56 as if fully set forth herein.

58. Upon information and belief, Defendant University and/or the ILIR are "programs" receiving federal financial assistance within the meaning of Title VI.

59. Pursuant to the above-referenced allegations, plaintiff was denied the benefits of and continued participation in, the program(s) on the basis of his race, in violation of Title VI.

60. As a direct and proximate result of the above-referenced acts of discrimination, Plaintiff has suffered and continues to suffer actual damages, including lost wages and benefits, emotional distress, humiliation, loss of reputation and mental suffering.

61. As a direct result of the discriminatory acts of Defendants, Plaintiff has incurred, and will continue to incur, substantial attorney fees and costs in connection with this matter.

WHEREFORE, plaintiff prays for judgment against all Defendants:

a) for his actual damages;

b) for compensatory damages to compensate for emotional distress, humiliation, loss of reputation and mental suffering;

c) for prejudgment and post judgment interest as provided by law;

d) for his costs incurred herein, including reasonable attorney fees;

e) for injunctive relief directing Defendants to confer the above-referenced Master's Degree to Plaintiff.

f) for such other and further relief which the Court deems just and proper

COUNT V – RETALIATION
(All Defendants)

62. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 61 as if fully set forth herein.

63. On or about April 15, 1998, Plaintiff complained to Defendant Denise Hendricks concerning the above-referenced acts of discrimination which preceded or occurred in conjunction with his termination from employment at the PSO, including the racially derogatory remarks of Defendant Thompson.

64. On or about April 23, 1998 Plaintiff complained to Ron Bacevich, a Labor Relations Specialist in the PSO, regarding these same acts of discrimination.

65. Shortly after making these complaints, Plaintiff was subjected to adverse actions including, but not limited to, denial of a previously approved waiver for a "Research Methods" class, Professor Michael LeRoy's refusal to supervise Plaintiff's independent study in

Employment Law, to which LeRoy had previously agreed, and termination from the Master's Degree program on June 18, 1998.

66. The proximity in time between the complaints and the above-referenced acts raises the inference of a causal connection between the protected activities and the retaliatory acts.

67. As a direct and proximate result of the above-referenced acts of discrimination, Plaintiff has suffered and continues to suffer actual damages, including lost wages and benefits, emotional distress, humiliation, loss of reputation and mental suffering.

68. As a direct result of the discriminatory acts of Defendants, Plaintiff has incurred, and will continue to incur, substantial attorney fees and costs in connection with this matter.

a) for his actual damages, including back pay, front pay, and other economic benefits of employment;

b) for compensatory damages to compensate for emotional distress, humiliation, loss of reputation and mental suffering;

c) for prejudgment and post judgment interest as provided by law;

d) for his costs incurred herein, including reasonable attorney fees;

e) for such other and further relief which the Court deems just and proper.

69. Plaintiff hereby demands trial by jury.

JOANNA C. FRYER

By /s/ Joanna C. Fryer

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